Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED DECEMBER 15, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

VOL. I

INDEX.

	Original	Print
Record from D. C. U. S., Eastern District of Virginia	1	1
Caption (omitted in printing)	1	
Complaint	2	1
Order convening court pursuant to Section 266 of Judicial Code, etc.	20	18
Answer of defendants	24	22
Letter of United States Circuit Court Judge to District Judge with reference to hearing	53	41
Order extending time for hearing of action	54	42
Opinion of the Court, Soper, J.	54-a	43
Motion of plaintiffs for new trial, etc.	56	66
Schedule "A"—Statement of inaccuracies in opinion, etc.	60	68
Schedule "B"—Proposed additional findings of fact.	65	72
Schedule "C"—Statement of conclusions of law which are incorrect, etc.	69	76
Schedule "D"—Proposed additional conclusions of law	70	76

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1940.

—5730

Record from D. C. U. S., Eastern District of Virginia—Continued.	Original	Print
Notice of intention to bring motion on for hearing	71	77
Motion of plaintiffs for injunction pending appeal	72	77
Order denying motion for rehearing	75	79
Order dismissing bill of complaint	76	79
Order granting injunction pending appeal	77	80
Notice of appeal	78	80
Petition for appeal	79	81
Assignments of error	101	82
Order allowing appeal and fixing amount of appeal bond	112	92
Citation and service (omitted in printing)	113	
Appeal bond (omitted in printing)	115	
Stipulation of facts	117	93
Order filing stipulation of facts	132	106
Order making statement of evidence part of record on appeal	133	106
Statement of evidence	134	106
Caption and appearances	135	107
Evidence on behalf of plaintiffs:		
Nicholas, Robert H.		
Direct examination	135	107
Cross-examination	172	132
Redirect examination	227	167
Recross-examination	239	175
Re-(re) direct examination	241	176
McNamara, John J.		
Direct examination	242	177
Cross-examination	246	202
Haas, Theodore H.		
Direct examination	247	203
Cross-examination	254	207
Recross-examination	254	207
Adair, Lewis C.		
Direct examination	256	208
Cross-examination	288	226
Redirect examination	346	259
Recross-examination	349	261
Evidence on behalf of defendants:		
DeJarnette, Edmund T.		
Direct examination	353	263
Cross-examination	377	280
Re-direct examination	396	293
Recross-examination	399	295
Boswell, Robert I.		
Direct examination	402	297
Cross-examination	418	308
Redirect examination	428	314
Recross-examination	432	316
Redirect examination	438	321
Recross-examination	443	324

	Original	Print
Record from D. C. U. S., Eastern District of Virginia—Continued.		
Statement of evidence—Continued.		
Evidence on behalf of defendants—Continued.		
Clark, Roger E.		
Direct examination	446	326
Cross-examination	460	336
West, Oscar H.		
Direct examination	474	345
Cross-examination	476	347
Redirect examination	483	351
Redirect examination	484	352
Tabb, T. Garnett.		
Direct examination	487	354
Cross-examination	510	369
Redirect examination	696	487
Recross-examination	706	494
Re-(re)direct examination	720	516
Moore, T. T.		
Direct examination	723	518
Cross-examination	739	529
Moore, T. T. (recalled).		
Cross-examination	800	566
Redirect examination	807	570
Recross-examination	809	571
Rebuttal evidence on behalf of plaintiffs:		
Chappell, Charles C., Jr.		
Direct examination	787	559
Gibson, John A.		
Direct examination	789	561
Cross-examination	793	562
Redirect examination	796	564
Recross-examination	798	565
Gallaher, Charles F.		
Direct examination	812	574
Cross-examination	828	583
Redirect examination	832	585
Osborn, William H.		
Direct examination	834	586
Cross-examination	851	597
Redirect examination	862	602
MacNeil, Channing F.		
Direct examination	864	604
Cross-examination	873	609
Izard, James J.		
Direct examination	901	627
Cross-examination	908	631
Redirect examination	965	667
Recross-examination	969	670
Yancey, John G.		
Direct examination	971	671
Cross-examination	981	677
Redirect examination	987	681

Record from D. C. U. S., Eastern District of Virginia—Continued.
Statement of evidence—Continued.
Rebuttal evidence on behalf of plaintiffs—Continued.

	Original	Print
Davison, C. M.		
Direct examination	987	681
Cross-examination	1013	698
Murphy, T. A.		
Direct examination	1029	707
Cross-examination	1065	732
Adair, Lewis C.		
Direct examination	1107	762
Cross-examination	1121	771
Sutcliffe, E. J.		
Direct examination	1124	774
Cross-examination	1127	775
Redirect examination	1138	783
Thomas, William C.		
Direct examination	1143	786
Cross-examination	1161	800
Redirect examination	1185	816
Recross-examination	1188	817
Vanderfeen, C. K.		
Direct examination	1189	818
Cross-examination	1195	823
Kerr, Gilbert L.		
Direct examination	1201	826
Cross-examination	1202	827
Anderson, Hale.		
Direct examination	1205	830
Cross-examination	1214	836
Otis, Courtlandt		
Direct examination	1242	857
Cross-examination	1255	866
Redirect examination	1285	885
Burbank, James A.		
Direct examination	1285	886
Cross-examination	1292	890
Tarbell, Thomas F.		
Direct examination	1298	894
Cross-examination	1303	901
Redirect examination	1305	903
Gesner, M. A.		
Direct examination	1307	904
Cross-examination	1322	915
Redirect examination	1339	928
Offer in evidence—Statement containing information furnished by T. T. Moore	1341	929

	Original	Print
Record from D. C. U. S., Eastern District of Virginia—Continued.		
Statement of evidence—Continued.		
Plaintiffs' Exhibits:		
1—National rules regarding acquisition and field supervision costs for casualty insurance	178-a	136
4—Automatic schedule fidelity bond	243-a	179
5—Glass policy	243-b	185
6—National standard automobile liability policy	243-c	192
7—Maximum benefit accident policy	243-d	197
3-c—Agency agreement	1241-a	856
39—Table showing 1938 premiums on casualty business—Virginia	1298-a	896
40—Table showing 1938 premiums on casualty business—Total business	1300-a	899
Defendants' Exhibits:		
"A"—Resolution passed by Board of Directors, February 13, 1939	376-a	279
"C"—Policy covering a workmen's compensation risk	706-a	495
"D"—Policy with reference to boiler and machinery insurance	706-b	502
Letter of attorney for defendants accepting statement of evidence, etc.	1348	935
Praecipe for transcript of record on appeal	1349	935
Clerk's certificate (omitted in printing)	1352	
Statement of points to be relied upon and designation as to printing record	1353	938

[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA**

No. 8

WILLIAM H. OSBORN, CHANNING F. MACNEIL, LEWIS C. ADAIR, Accident and Casualty Company of Winterthur, Switzerland, American Automobile Insurance Company, Bankers Indemnity Insurance Company, Car and General Insurance Corporation, Limited, Central Surety and Insurance Corporation, Continental Casualty Company, Eagle Indemnity Company, Fireman's Fund Indemnity Company, General Accident Fire and Life Assurance Corporation, Limited, Glens Falls Indemnity Company, Hartford Accident and Indemnity Company, Indemnity Insurance Company of North America, London & Lancashire Indemnity Company of America, London Guarantee and Accident Company, Limited, Maryland Casualty Company, Massachusetts Bonding and Insurance Company, National Casualty Company, New Amsterdam Casualty Company, New York Casualty Company, Phoenix Indemnity Company, Royal Indemnity Company, Seaboard Surety Company, Standard Surety & Casualty Company of New York, Sun Indemnity Company of New York, The Aetna Casualty and Surety Company, The Century Indemnity Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, United States Casualty Company, United States Guarantee Company, Zurich General Accident and Liability Insurance Company, Limited, Plaintiffs,

v.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER and LESTER HOOKER, Individually and as the Persons Constituting the State Corporation Commission of the State of Virginia, and George A. Bowles, Individually and as Commissioner of Insurance of the State of Virginia, Defendants

Civil Action

COMPLAINT—Filed November 12, 1938

[fol. 3] (1)

The plaintiffs and defendants in this action are as stated in the caption. The natural persons who are plaintiffs are

sometimes hereinafter called agent plaintiffs, and the other plaintiffs are sometimes hereinafter called company plaintiffs.

Jurisdiction in this action is founded as follows:

As to each agent plaintiff, the action arises under the 14th Amendment of the Constitution of the United States, Section 1, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000); and is to redress the deprivation under color of a certain statute of the State of Virginia of rights, privileges, and immunities secured by the 14th Amendment to the Constitution of the United States, Section 1.

As to each company plaintiff, the action arises under the 14th Amendment to the Constitution of the United States, Section 1. As to each of General Accident Fire and Life Assurance Corporation, Limited, Indemnity Insurance Company of North America, London Guarantee and Accident Company, Limited, Maryland Casualty Company, Phoenix Indemnity Company, The Aetna Casualty and Surety Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, and Zurich General Accident and Liability Insurance Company, Limited, the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000). The matter in controversy may or may not so exceed said sum, as to each other company plaintiff.

(2)

(a) Each agent plaintiff was born or has been naturalized in the United States and is subject to the jurisdiction thereof and of the State of Virginia, and is a resident of said state. For nearly two years up to July 15, 1938, as to Osborn, and more than ten years as to each of MacNeil and Adair, the agent plaintiffs were registered and held certificates of [fol. 4] registration under Section 4235 of the Code of Virginia, as agents of one or more company plaintiffs. During said periods, and continuously up to the present time so far as permitted by law, the agent plaintiffs have been and are authorized by said company plaintiffs respectively to act as their agents and to solicit, write, countersign, issue, and make contracts of insurance or surety, or both, for

them, and have done so. During said periods and continuously up to the present time the agent plaintiffs have been and are the salaried managers of the Richmond Branch Offices of said company plaintiffs, Osborn of The Aetna Casualty and Surety Company, MacNeil of The Travelers Indemnity Company, and The Travelers Insurance Company, and Adair of The Fidelity and Casualty Company of New York. Under the laws of the State of Virginia the agent plaintiffs, if they should have continued after July 15, 1938, so to act, without being registered and having secured certificates of registration under said Section 4235 as it had then been amended and re-enacted, would have been liable to the imposition of heavy fines and other penalties. If permitted by the defendants the name of each agent plaintiff would have been filed by his company or companies on or before July 1, 1938 with the State Corporation Commission of the State of Virginia, only as a resident agent, and he would have procured a certificate of registration only as a resident agent. But, solely for the reason that the agent plaintiffs are compensated by salary instead of commissions, said companies were not permitted so to file the names of the agent plaintiffs, and the agent plaintiffs were not permitted to procure such certificates of registration, and accordingly under the duress of the fear of said fines and penalties the names of the agent plaintiffs were filed as company representatives, and each agent plaintiff procured a certificate of registration as such, effective July 15, 1938, which he now holds.

(b) Each company plaintiff is a foreign or alien corporation and is a stock casualty insurance company or surety company, or both, and more than three years ago was admitted to the State of Virginia, and has since been and now is licensed to conduct therein the casualty insurance or surety business, or both, except that Accident and Casualty Company of Winterthur, Switzerland, and Seaboard Surety [fol. 5] Company, were admitted and became so licensed only on May 18, 1938, and on January 21, 1937, respectively.

(c) The defendants Ozlin, Fletcher, and Hooker are and for some years have been the only members of the State Corporation Commission of the State of Virginia hereinafter sometimes called the Commission, which is a constitutional department in existence since 1902 having the power and duty to administer the state insurance laws. The de-

fendant Bowles is and for some years has been the Commissioner of Insurance of the State of Virginia, was appointed by the Commission, serves at its pleasure, and is the head of a bureau or division thereof through which it administers said laws. All of the defendants are residents of and have their only offices in the City of Richmond, Virginia.

(3)

The State of Virginia licenses domestic and duly admitted foreign and alien stock casualty insurance and surety companies by annual licenses expiring April 30th.

(4)

By Section 1 of an Act approved February 6, 1896 (Acts of 1895-6, p. 258), foreign fire insurance companies admitted to Virginia were forbidden to "make contracts of insurance on property herein save through *regularly constituted* agents", and it was provided that its violation "is hereby declared to be a violation of the laws of this state providing for the payment of taxes by foreign insurance companies permitted to do business in Virginia". (At February 6, 1896 an insurance company doing business in Virginia was required by law annually to pay to the Treasurer a tax of 1% "upon the gross amount of all premiums collected or received, or obligations taken therefor, derived from its business in this state", immediately after making return thereof under oath to the Auditor of Public Accounts.) By Section 5 of said Act it was provided that renewals of their licenses should only issue after the filing of an affidavit "that no policy or policies of insurance covering property in the State of Virginia has been issued during the twelve months [fol. 6] preceding, except by resident agents of such company in Virginia, duly commissioned". No requirement has ever been made by the laws of the State of Virginia that such agents record the contracts so issued by them, or report such issuing, or the amounts of premiums upon the policies so issued, to any public authority.

By an Act approved April 2, 1902 (Acts of 1901-2, p. 738), accident, health, employers' liability, steam boiler, plate glass, surety and burglary insurance companies were included in the above Act, along with fire insurance companies, as companies forbidden to make "contracts of insurance on property herein" save through regularly constituted agents,

and it was further specified that such agents must be "residing in Virginia".

The Virginia insurance laws were codified by an Act approved March 9, 1906 (Acts of 1906, p. 122) creating the insurance bureau, Section 1 being included as Section 34, and Section 5 as Section 38, of Chapter II thereof; but the companies affected were then provided to include also "other insurance companies", and the contracts to include contracts "on *persons or* property herein". In 1919, Section 1 became Section 4222 of the Code of Virginia, and Section 5 became Section 4226 thereof.

By an Act effective June 19, 1936 (Acts of 1936, p. 169) Section 4222 was amended and re-enacted to define the contracts to which it applied as "contracts of insurance *or surety* on persons or property herein", and to provide that no such contract might be "written, issued or delivered" unless countersigned by "a regularly constituted and registered agent of such company whose residence and principal place of business is in this State". This Act also provided that a salaried employee of a stock company might write, issue, or countersign such a contract only if a registered resident agent.

By an Act effective June 21, 1938 (Acts of 1938, p. 343), Section 4222 was again amended and reenacted so as to permit countersignature by a registered resident "agency", if a registered resident "agent" attest the countersignature, and to forbid countersignature (except of life, title and ocean marine insurance contracts) by any state agent, special agent, company representative, manager or other salaried representative of a stock company.

[fol. 7] Neither the 1936 nor 1938 Act above referred to contained the provision that a violation should be a violation of the tax laws, though said premium tax laws are now and have continuously been in force since 1896 and before.

The defendants now construe and for a long period of years they and their predecessors have construed the laws now incorporated in the Code of Virginia as Sections 4222 and 4226 to apply to all contracts described therein (now, as "contracts of insurance or surety on persons or property" in the State of Virginia) and hereinafter sometimes referred to simply as contracts or as contracts covering in Virginia, including those the proposals for which have been wholly solicited and procured and which contracts themselves have been wholly negotiated, written (except for

countersigning), issued, delivered, the premiums on which have been collected, and every step in the making of which by each party thereto has been taken, outside of the State of Virginia. Such contracts as are so produced are sometimes hereinafter referred to as "produced outside of Virginia"; where spoken of herein as so produced it is meant that they were produced by non-resident brokers or agents duly licensed to act as brokers or agents by the states of their residence, and where they act as such; where "non-resident brokers or agents" are referred to herein it is meant that they are so licensed.

During said period the defendants and their predecessors have enforced or attempted to enforce said laws, and the defendants are now enforcing or attempting to enforce the same, in accordance with said construction.

(5)

For a number of years last past, and up to June 21, 1938, there was only a single classification as "agent" of persons registered under the laws of the State of Virginia as agents of stock casualty insurance and surety companies doing business in the State, the companies being required by a law which is Section 4235 of the present Code of Virginia to file annually on or before July 1st, with the Commission (or at such other times as they might be appointed) a list of agents authorized to solicit insurance for them in [fol. 8] the state, and said agents being required to secure certificates of registration from the Commission for each company proposed to be represented by them, authorizing them to represent it for a period ending on July 15th.

But by said Act effective June 21, 1938 (Acts of 1938, p. 343) Section 4235 was amended and reenacted to require the companies to file lists of the "agents, resident agents, agencies and company representatives", and provision was made for separate forms of certificates of registration for agents, agencies and company representatives. By this Act definitions were given to the words and terms "agent", "agency", "resident agent", "resident agency", and "company representative", by a new Code Section 4221-a created to that end. As construed by the defendants, the said Act requires the registration as a company representative and not otherwise of any salaried employee of a company, and the defendants are now enforcing said Act as so construed.

(6)

By another act effective June 19, 1936 (Acts of 1936, p. 270) and provided to be Section 4226-a of the Code of Virginia, a registered resident agent was forbidden to write, countersign, issue or deliver any policy of insurance upon persons or property in Virginia unless he should collect the full premium therefor. This Act went on to provide that he should be entitled to and receive the usual and customary commissions allowed on such policies. And it specified that he should write policies at the request only of another registered agent or broker licensed by the State of Virginia authorized by law to broker the business; and provided that on exchange of business between a Virginia resident agent and a non-resident agent or broker licensed as broker by the State of Virginia, the Virginia agent might pay commissions to the non-resident only in the same degree and proportion as are allowed Virginia agents, either by custom or the requirement of the statute law of the state in which the person licensed as broker resides. This Act forbade agents to countersign a blank contract, or to pay or allow any portion of any commission to an agent not regularly commis- [fol. 9] sioned and registered, or to any resident or non-resident broker not licensed by the State of Virginia; and it provided for violation to be punished by a fine of $10 to $500, and the suspension or revocation of certificate of registration. Section 168 of the Tax Code as then in effect defined a "broker", provided for the licensing, and contained regulations of brokers.

But by said 1938 Act which became effective June 21, 1938, Section 168 of the Tax Code was repealed and Section 4226-a was materially amended and reenacted. Section 4226-a was further changed to apply throughout to contracts of surety as well as of insurance; also to further limit the agents and agencies at whose request a registered agent or agency might write a contract by specifying that such agent or agency must be either (1) another resident agent or agency properly licensed to transact the same class of business, or (2) a non-resident insurance broker licensed by the State of Virginia, authorized by law to broker such a contract; and to provide that on exchange of business between a resident agent or agency in Virginia and a non-resident broker in another state licensed by the State of Virginia, the Virginia

agent might allow or pay to the non-resident a commission not exceeding 50% of the commission of the Virginia agent.

This 1938 Act also included in Section 4226-a a definition of a non-resident insurance broker as any non-resident person, firm or corporation soliciting for compensation, directly or indirectly to be derived therefrom, any "contracts of insurance or surety on persons or property located in this State", whether on behalf of the person desiring to effect the contracts or on account of an insurance company. It imposed on such broker for the privilege of transacting such business an annual license tax of $100 (subject to reciprocal decrease or retaliatory increase); and required that before the Commission should license such broker, he should make affidavit that he will not directly or indirectly place any such contracts except through duly licensed resident agents or agencies.

Section 4226-a does not apply to mutual insurance companies, or to title, life or ocean marine insurance contracts.

As construed by the defendants the words "usual and [fol. 10] customary commissions allowed" on contracts or policies, appearing in Section 4226-a, refer to the entire amount of the usual and customary commissions payable to brokers or agents out of the premiums on such contracts or policies, for the production of the same; and the words "on exchange of business", as appearing therein, include a reference to a transaction where a non-resident broker or agent sends a contract produced by him in his own state, or causes it to be sent, to a resident agent or agency in Virginia for the latter to countersign it, and the latter does so and sends back the contract, or causes it to be so sent; and said section applies throughout to all of the contracts to which it is above alleged in paragraph (4) that the defendants construe Section 4222 to apply; and said section requires a non-resident broker or agent to have a Virginia broker's license in order lawfully to produce, and be allowed commissions as a producer of, a contract covering in Virginia, even though none of his solicitation or other activity takes place in Virginia; and the defendants are enforcing, or attempting to enforce, Section 4226-a, as amended in 1938, as so construed.

(7)

(a) Each agent plaintiff up to June 21, 1938, or a later date, has countersigned for his respective company or com-

panies large numbers of contracts covering in Virginia some of which were produced outside of Virginia and some in Virginia. No special compensation has been charged or made for said countersigning services but the same have been rendered in the performance of the duties of the agent plaintiffs for which they have been compensated by their salaries. Due to the frequency of said countersignatures the aggregate value of the services of each agent plaintiff has been very great, though the value of furnishing a single countersignature was trivial.

(b) Numerous ones of the company plaintiffs, including those represented by the agent plaintiffs, have large, valuable, and expensive field forces and plants in Virginia, which cannot be moved therefrom without destruction thereof, and have had such for many years, and make numerous contracts covering in Virginia but produced outside of Virginia.

[fol. 11] In the year 1937, and in the first half of the year 1938, the company plaintiffs named below made contracts covering in Virginia but produced outside of Virginia, on some of which the aggregate premiums for the Virginia coverage, the approximate amounts of commissions paid to the non-resident brokers or agents who produced the said contracts, and the amounts paid for the Virginia countersignatures of said contracts were as shown in the following table, viz: [See p. 10]

Company Plaintiffs		Premiums for Va. Coverage	Payments to Non-Residents	Payments for Va. Countersignatures
General Accident Fire and Life Assurance Corporation, Ltd.	1937	$20,938.74	$4,295.88	$134.00
	½-1938	$15,056.43	$3,140.49	$137.50
Indemnity Insurance Company of North America	1937	$24,739.24	$4,579.22	Not available
	½-1938	$13,458.72	$2,513.62	Not available
London Guarantee and Accident Company, Ltd.	1937	$37,153.39	$6,490.56	Not available
	½-1938	$9,188.22	$1,437.35	Not available
Maryland Casualty Company	1937	$30,309.69	$4,636.86	$402.34
	½-1938	Not available	Not available	Not available
Phoenix Indemnity Company	1937	$19,495.04	$3,317.22	Not available
	½-1938	$11,493.01	$1,977.20	Not available
The Aetna Casualty and Surety Company	1937	$20,428.94	$2,743.25	None
	½-1938	$39,566.39	$6,394.39	None, except for cases not material after 6-20-38
The Fidelity and Casualty Company of New York	7-1-37 to 7-1-38	$54,973.98	$7,995.84	No payments made except for cases not material after 6-20-38
The Hartford Steam Roller Inspection and Insurance Company	1937	$47,656.00	$10,722.00	None
	½-1938	$3,491.00	$785.00	None, except for cases not material after 6-20-38
The Standard Accident Insurance Company	1937	$17,257.49	$3,678.84	None
	½-1938	$11,171.46	$2,480.84	Not available
[fol. 12]				
The Travelers Indemnity Company	1937	$14,377.02	$2,942.14	None for the bulk of the countersignatures and only nominal amounts for the others
	½-1938	$6,635.96	$1,342.23	
The Travelers Insurance Company	1937	$64,212.94	$8,775.64	
	½-1938	$36,359.21	$5,289.57	
Zurich General Accident and Liability Insurance Company, Limited	1937	$59,425.15	$10,683.51	$592.95
	½-1938	$37,306.98	$6,274.84	Not available

As to each of the above company plaintiffs in similar periods subsequent to those for which figures are shown above, the figures will average substantially the same except to the extent that they shall be affected by said 1938 Act or by other factors not now to be foreseen. If said 1938 Act had been in effect throughout 1937 and the first half of 1938, and had been complied with by the persons furnishing the Virginia countersignatures, there would have been payable by each of said company plaintiffs for Virginia countersignatures on the contracts shown in the table, one-half of what it paid to said non-residents.

Some of the contracts shown in the table were produced by brokers or agents not licensed as brokers by the State of Virginia. The contracts shown in the table could have been placed with equal advantage to the producing brokers or agents so far as the amounts of their commissions were concerned, in companies not subject to Section 4226-a of the Code of Virginia.

Among said contracts shown in the table were numerous individual contracts on each of which the amount of commission paid to the non-resident producer was thousands or hundreds of dollars.

Those of said contracts shown in the table upon which much the larger part of the premiums shown therein was paid were produced by non-resident brokers, not agents. In most instances the producing broker had power to determine and control the company with which the contract [fol. 13] would be made, and would not have permitted the contract to be made with the company with which it was made unless the broker had received substantially as large an amount of commission as he did receive.

(8)

This action is brought to secure a declaration of the rights of the plaintiffs, and to enjoin and restrain the enforcement of each of the several provisions of said 1938 Act (Acts of 1938, p. 343) which either singly or in conjunction with other provisions prohibits:

(a) The countersignature of contracts covering in Virginia by the agent plaintiffs; and prevents the procurement by the company plaintiffs by which duly registered company representatives are employed, of countersignatures of said contracts by such representatives;

(b) The making by company plaintiffs outside of Virginia of such of said contracts as are produced outside of Virginia, through brokers or agents who are not regularly constituted and registered agents of such companies residing in and having their principal places of business in Virginia, notwithstanding that said contracts shall be countersigned in Virginia as required by its laws;

(c) The countersignature by the agent plaintiffs, if and when otherwise permitted by law so to do, of such of said contracts as are produced outside of Virginia, without collecting at the times the contracts are written, issued, or delivered, or within reasonable times thereafter, the full premiums on said contracts, or seeing to such collection thereof; and prevents the procurement by the company plaintiffs of countersignatures of said contracts without the countersigning agents collecting or seeing to the collection of said premiums at or within the said times;

(d) The countersignature by the agent plaintiffs (if and when so permitted) of such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions allowed thereon for the production thereof; and prevents the company plaintiffs from procuring the countersignatures for said contracts without expense or by paying for the countersignatures of said contracts, amounts of compensation commensurate with the value of the services rendered or as mutually agreed which [fol. 14] are less than one-half of the amounts of such usual and customary commissions;

(e) The countersignature by the agent plaintiffs (if and when so permitted) of such of said contracts as are produced outside of Virginia, at the request of brokers or agents not registered under Section 4235 of the Code of Virginia, or otherwise licensed by the State of Virginia; and prevents the company plaintiffs from procuring countersignatures of said contracts at the request of said non-resident brokers or agents;

(f) The allowance or payment by the agent plaintiffs who shall countersign such of said contracts as are produced outside of Virginia to those non-resident brokers or agents not licensed by the State of Virginia who shall have produced said contracts, of any portion of any commission which said agent plaintiffs receive, or, are entitled to receive; and prevents the company plaintiffs from procuring

said allowances or payments by Virginia countersigners of said contracts to said non-resident brokers and agents;

(g) The allowance or payment by the agent plaintiffs who shall countersign such of said contracts as are produced outside of Virginia to non-resident brokers or agents who are licensed by the State of Virginia as non-resident brokers and shall have produced said contracts, of more than 50% of the usual and customary commissions thereon; and prevents the company plaintiffs from procuring allowances or payments in excess of the said portion of said commissions by Virginia countersigners of said contracts to said non-resident brokers or agents.

(9)

The said 1938 Act and each provision thereof mentioned in paragraph (8) hereof violates the rights of the plaintiffs as follows:

It [except the provision having the effect as stated in sub-paragraph (b) of paragraph (8)] violates the rights of the agent plaintiffs because it abridges their privileges or immunities as citizens of the United States and deprives them of their liberty and property without due process of law contrary to the provisions of Section 1 of the 14th Amendment of the Constitution of the United States, and the provision having the effects as stated in subparagraph (a) of paragraph (8) also denies them the equal protection [fol. 15] of the laws contrary to said Section of said Amendment.

It violates the rights of the company plaintiffs because it deprives them of their property without due process of law contrary to the provisions of Section 1 of the said 14th Amendment.

The plaintiffs do not claim that any provision of the said 1938 Act violates the rights of the company plaintiffs because of denying them the equal protection of the laws, nor that any provision thereof violates the rights of the agent plaintiffs because of such denial, except for the reason as shown in paragraph (11) hereinafter.

(10)

Compliance with those provisions of said 1938 Act which have the effects as stated in sub-paragraphs (a) to (g) of paragraph (8), and with each of them, subjects or will sub-

ject the agent plaintiffs, and the company plaintiffs, as shown in each sub-paragraph hereof, to immediate, irreparable damage and injury, which is continuing or will continue day by day. Each said compliance interferes or will interfere with the transaction of that part of the business of each plaintiff which is or will be affected thereby, and injures or will injure and tends or will tend to destroy the same. Each said compliance, having the effects as stated in each of said sub-paragraphs, causes or will cause said damage and injury to the plaintiffs, as follows:

(a) To the agent plaintiffs, by preventing them from countersigning contracts, which work they are employed and paid to do, and rendering their employment less advantageous to their employers than it has heretofore been, and lessening the value of the services of said plaintiffs; to the company plaintiffs by which registered company representatives are employed by preventing them from securing without any special payment being made therefor frequently needed Virginia countersignatures on contracts produced outside of Virginia, and compelling them to make a special compensation therefor to persons who are not company representatives; and to said company plaintiffs by preventing their securing countersignatures by said company representatives of contracts produced in Virginia in cases [fol. 16] where the special circumstances do not admit of countersignatures being furnished by the agents who produced the contracts;

(b) To the company plaintiffs, by preventing them from transacting that part of their business which consists of the making in other states than Virginia of such of said contracts as are produced outside of Virginia through non-resident brokers or agents, but are countersigned in Virginia, and interferes with the making of said contracts by increasing the difficulty, time, and expense of making said contracts;

(c) To the agent plaintiffs by preventing the countersignature by them of such of said contracts as are produced outside of Virginia, without collecting or seeing to the collection of the full premiums thereon, thus rendering the employment of the agent-plaintiffs less advantageous to their employers and lessening the value of their services; to the company plaintiffs by preventing the procurement of countersignatures of said contracts without said collec-

tion by the countersigners, or their seeing to said collection, increasing the difficulty, time and expense of procuring the same, and requiring them to incur the loss of time and expense of the handling and accounting for said premiums with the countersigners;

(d) To the agent plaintiffs by preventing the countersignature by them of such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions for the production thereof, with the effects indicated in (c) just above; to the company plaintiffs by preventing the procurement of countersignatures of said contracts without said receipt by the countersigners, with the effects as indicated in (c) just above; to the agent plaintiffs by requiring them to receive said commissions though they desire to and ought to receive no compensation for said countersignature services beyond their salaries; to the company plaintiffs by requiring them to pay again for countersignature services by registered company representatives payment for which has already been made by the payment of their salaries, and to make greatly excessive and unreasonable compensation therefor to registered resident agents;

(e), (f), (g) To the agent plaintiffs by respectively preventing their countersigning such of said contracts as are produced outside of Virginia, at the request of non-resident brokers or agents not licensed by the State of Virginia, preventing the allowing or paying of any part of the usual and [fol. 17] customary commissions for the production thereof to those of said persons who shall have produced said contracts, and unreasonably limiting the portions thereof which may be allowed or paid to those non-residents who are licensed as brokers by the State of Virginia, who shall have produced said contracts, thus preventing the agent plaintiffs from doing some of the work they are employed and paid to do, rendering their employment less advantageous to their employers and lessening the value of their services; to the company plaintiffs by respectively preventing their procurement of countersignatures of said contracts at the request of non-resident brokers or agents not licensed by the State of Virginia, preventing their procurement of allowances or payments of any part of said usual and ordinary commissions for the production thereof to such of said persons as shall have produced said contracts, and unreasonably limiting the portions of said commissions which

they may procure to be paid to those non-residents who are licensed as brokers by the State of Virginia and who shall have produced said contracts. Each destroys or will destroy that part of the businesses of the company plaintiffs which consists of the making of such of said contracts as are produced by non-residents whether or not they are licensed as brokers by the State of Virginia.

(11)

Each said regulation of the actions of any of the plaintiffs and each said limitation imposed upon the conduct of any of them in the exercise of a right to work and labor, or a right to conduct a business, by means of the said 1938 Act mentioned above, and by means of one or more provisions thereof, having an effect as stated in paragraph (8) above, is undue, unreasonable, arbitrary and void. Each of said provisions is designed exclusively to promote the interests of the general body of the Virginia stock fire, casualty, and surety agents who are not registered company representatives of companies, with the view to unjustly enrich them at the expense of those who are so registered (by lessening the value of their services) at the expense of the companies (by increasing their operating costs and causing them losses of business) at the expense of the insuring public (by increasing the cost of insurance) and at the expense of the [fol. 18] Commonwealth of Virginia, (by causing loss of the taxes on premiums on contracts covering in Virginia but produced outside of Virginia which will be placed in non-admitted companies). The unreasonable prohibition against the agent plaintiffs countersigning contracts, although they are in every respect qualified and entitled so to do is intended only to compel the company plaintiffs to secure countersignatures of their contracts covering in Virginia though produced outside of Virginia, from the Virginia registered resident agents. The unreasonable regulations of the furnishing of such countersignatures on such contracts are intended only to secure to them the payment of grossly excessive amounts of compensation therefor. The regulation and limitation having the effects as stated in sub-paragraph (a) of paragraph (8) is void whether undue, unreasonable, and arbitrary, or otherwise, because not bear-

ing equally upon the agent plaintiffs and registered resident agents.

(12)

Unless the defendants shall be enjoined and restrained as stated in paragraph (8) hereof, plaintiffs must comply in the future with the terms and provisions of said 1938 Act in fear of the severe penalties which may be imposed upon them by the laws of the State of Virginia for non-compliance therewith.

(13)

There is an actual controversy between each plaintiff and the defendants. None of the plaintiffs has a plain, adequate, speedy, and efficient remedy at law or in equity in the courts of the State of Virginia. None of the plaintiffs has a full, complete, and adequate remedy at law.

Wherefore the plaintiffs pray that their rights in the premises be declared.

And the plaintiffs further pray that a permanent injunction be awarded against the enforcement of those provisions of said 1938 Act hereinbefore alleged to violate the constitutional rights of the plaintiffs, that a temporary injunction be awarded against said enforcement pending final judg-
[fol. 19] ment herein, and that pending hearing and determination of a motion for a temporary injunction, a temporary restraining order be awarded against said enforcement.

And the plaintiffs further pray that it be adjudged that each said provision of said 1938 Act is contrary to and in violation of the Constitution of the United States, and that each said provision and said Act is void and of no effect.

And the plaintiffs further pray that plaintiffs have such further relief as to equity may seem meet and the nature of their cases may require.

(Signed) A. D. Christian, Attorney for the Plaintiffs, 506 Mutual Building, Richmond, Va.

Christian, Barton and Parker, 506 Mutual Building, Richmond, Va., Of Counsel.

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING COURT PURSUANT TO SECTION 266 OF THE JUDICIAL CODE FOR HEARING ON APPLICATION FOR INTERLOCUTORY INJUNCTION, FIXING A DATE FOR HEARING, AND GRANTING A TEMPORARY RESTRAINING ORDER

Entered and Filed December 5, 1938

Upon the complaint and the individual affidavit of A. C. Epps, the joint affidavit of William H. Osborn, Channing F. MacNeil, and Lewis C. Adair, and the individual affidavit of Robert H. Nicholls, and after notice duly served on the attorney for the defendants, and argument of counsel for the plaintiffs and defendants, and upon the proceedings had, it appearing to the court that the said complaint seeks an injunction, interlocutory until hearing, and permanent thereafter, restraining the defendants from in any manner enforcing, or attempting to enforce against the plaintiffs, certain provisions of Chapter 218 of the Acts of 1938 of the General Assembly of the State of Virginia (Acts of 1938, p. 343) as hereinafter specified, upon the ground of the unconstitutionality of said Act, it is, pursuant to Section 266 of the Judicial Code, Ordered:

(1) The Honorable Robert N. Pollard, Judge of the above court, hereby calls to his assistance to hear and determine the application of plaintiffs for the granting of an interlocutory injunction, the Honorable Morris A. Soper, Judge of the United States Circuit Court of Appeals for the Fourth Circuit, and the Honorable Luther B. Way, Judge of the [fol. 21] United States District Court for the Eastern District of Virginia;

(2) That said defendants appear and show cause, if any they have, on the 1st day of February, 1939, at 10 o'clock A. M., at the United States Court House, Post Office Building, Richmond, Virginia, why an interlocutory injunction should not issue as prayed for in said complaint.

And it Appearing to the court that immediate and irreparable damage is being or will be caused to the plaintiffs by compliance with said Act, in that

(A) It prevents the agent plaintiffs, William H. Osborn, Channing F. MacNeil, and Lewis C. Adair, from countersigning contracts of insurance or surety on persons or property in the State of Virginia which work they are employed and paid to do, and renders their employment less advantageous to their employers than it has heretofore been, and thereby lessens the value of the services of the said plaintiffs; and prevents a number of the company plaintiffs, including The Aetna Casualty & Surety Company, The Travelers Indemnity Company, The Travelers Insurance Company, The Fidelity & Casualty Company of New York, from securing frequently needed Virginia countersignatures on contracts produced outside Virginia from their salaried company representatives, and compels them to make compensation therefor to persons who are not company representatives;

(B) It prevents the company plaintiffs from transacting that part of their business which consists of the making in other states than Virginia of such of said contracts as are produced outside of Virginia through non-resident brokers or agents, but are countersigned in Virginia, except through Virginia registered resident agents, and thereby interferes with their business of the making of said contracts by increasing of the difficulty, time, and expense of the making of said contracts;

(C) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia, without collecting the full premiums thereon, or seeing to the collection of the same, and thereby renders their employment less advantageous to their employers and lessens the value of their services; and prevents the company plaintiffs from procuring the countersignature of said contracts without said collection or the seeing to said collection by the countersigners, and thereby increases the difficulty, time, and expense of procuring the same, and requires the company plaintiffs to incur the loss of time and expense of the handling and accounting for said premiums with the countersigners;

(D) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions for the production thereof, with the effects indicated in the

preceding paragraph (C); and prevents the company plaintiffs from procuring countersignatures of said contracts without said receipt by the countersigners, with the effects [fol. 22] as there indicated; and requires the agent plaintiffs to receive said commissions, though they desire to, and ought to receive no compensation for their countersignature services beyond their salaries, and requires the company plaintiffs which employ salaried representatives to pay again for countersignature services by registered company representatives, when they have already made payment therefor by the payment of their salaries to said representatives, and requires all company plaintiffs to make greatly excessive and unreasonable compensation for Virginia countersignatures of said contracts to registered resident agents;

(E) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia, at the request of non-resident brokers or agents not licensed by the State of Virginia, and from allowing or paying any part of the usual and customary commissions for the production thereof to those of said persons who shall have produced said contracts, and unreasonably limits the agent plaintiffs as to the portion of said commissions which may be allowed or paid to those non-residents who are licensed as brokers by the State of Virginia, who shall have produced said contracts, and thereby prevents said agent plaintiffs from doing some of the work they are employed and paid to do, and renders their employment less advantageous to their employees, and lessens the value of their services; and prevents the company plaintiffs from procuring countersignatures of said contracts at the request of non-resident brokers or agents not licensed by the State of Virginia, and from the procurement of allowances or payments of any part of said commissions for the production of said contracts to such of said persons as shall have produced said contracts, and unreasonably limits the company plaintiffs as to the portions of said commissions which they may procure to be paid to those non-residents who are licensed as brokers by the State of Virginia and who shall have produced said contracts;

And it appearing to the court that all of the said injuries are being or will be immediately and irreparably sustained

by compliance with said Act in that they are continuously causing or will continuously cause expense, loss, and damage to the plaintiffs for the recovery of which they do not and will not have an adequate remedy; and that the plaintiffs have made out a *prima facie* case that each provision of said Act having an effect on the plaintiffs as set out in any of paragraphs (A) to (E) above, violates the constitutional rights of the plaintiffs and is therefore void; and that unless the defendants shall be enjoined and restrained, the plaintiffs must comply in the future with the terms and provi-
[fol. 23] sions of said Act in fear of the penalties which may be imposed upon them by the laws of the State of Virginia for non-compliance therewith, it is further ordered:

That Thos. W. Ozlin, William Meade Fletcher, and Lester Hooker, individually and as the persons constituting the State Corporation Commission of the State of Virginia, and George W. Bowles, individually and as Commissioner of Insurance of the State of Virginia, and their agents, servants, employees, and attorneys, be and they hereby are enjoined from in any manner enforcing, or attempting to enforce, each provision of said Act, having an effect on any of the plaintiffs, as set out in any of paragraphs (A) to (E) above. This injunction shall in effect until said hearing on said application for an interlocutory injunction and the entry of an order or decree thereon.

Provided that this order shall not become effective until the plaintiffs or someone in their behalf shall have filed with the Clerk of this Court a bond, with surety to be approved by the Clerk of this Court, conditioned upon the payment of such costs and damages as may be incurred or suffered by the defendants, such bond to be in the penalty of Five Hundred Dollars ($500).

And it is further ordered that service of a copy of this order on the defendants and on the Governor and Attorney General of the State of Virginia, on or before the 15th day of January, 1939, accompanied by a copy of said complaint and affidavits, shall constitute good and sufficient service hereof and notice of the hearing on the said application for an interlocutory injunction.

And it is further ordered that the time for the filing of the answer of the defendants is further extended to December 27, 1938.

Dated this 5th day of December, 1938, at 12 o'clock Noon.

Robt. N. Pollard, United States District Judge.

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed December 27, 1938

Thomas W. Ozlin, William Meade Fletcher and Lester Hooker, individually and as composing the State Corporation Commission of Virginia, and George A. Bowles, individually and as Commissioner of Insurance of Virginia, the defendants in the above entitled action, for answer to the bill of complaint therein, or to so much and such parts thereof as they are advised it is necessary or proper to make answer unto, answering, admit, deny, and allege as follows:

[fol. 25] (1)

With reference to the allegations set forth in paragraph (1) of the complaint, the defendants deny that the natural persons named as plaintiffs are insurance agents within the meaning of this term as generally used in the casualty insurance and surety business, and allege that said persons are in truth, and in fact, branch managers of the companies represented by them, and are "Company Representatives" within the classification of agents and representtives of certain insurance companies and of casualty companies and surety companies prescribed by the Virginia statutes referred to in the complaint. In order, therefore, to avoid confusion resulting from the indiscriminate use of the word "agent", the said natural persons who are named as plaintiffs in the complaint will hereafter in this answer be referred to as "Branch Managers". The defendants deny that either said branch manager plaintiffs or the company plaintiffs named in the complaint have been, are being, or will be, deprived of any rights, privileges, or immunities secured to them by the Fourteenth Amendment to the Constitution of the United States, by any statute of the State of Virginia referred to in the complaint, or by any act or threatened act of the defendants, or any of them, in construing or enforcing any such statute. The defendants admit that the matter in controversy exceeds three thousand dollars, as in said paragraph alleged.

(2)

The defendants admit all the facts alleged in paragraph two, except the allegation contained in the last sentence of

[fol. 26] subparagraph (a) to the effect that the sole reason the individual plaintiffs have not been able to secure certificates of registration as "Resident Agents" is because they receive a salary. Defendants aver that this allegation is wholly misleading. The Virginia statutes here challenged have divided and classified into two separate classes or groups the persons engaged in Virginia in the business of procuring, or of assisting or supervising others in procuring, the making of certain insurance, casualty and surety, contracts. This classification is based upon the essential duties, obligations and functions which have heretofore been performed by these two classes or groups, in the conduct of said business in Virginia, as well as generally throughout the United States.

Under these well established customs and practices of the business there is a marked difference in the general duties and functions, as well as in the obligations to the assured and to the companies, of salaried representatives which constitute one class, and of commissioned agents who constitute the other class. These customs have established the fact that the method of compensation applicable to a particular person engaged in this phase of the said business controls the duties, obligations and functions of such person in the business, and provides the most accurate basis of classification available.

The duties, obligations and functions of the "Branch Manager" plaintiffs are essentially different from those of "Resident Agents", and they are classified in separate classes or groups, as more fully appears in paragraph 17 of this answer. The defendants have construed the said statutes as forbidding a person from being licensed or regis-
[fol. 27] tered in both classes, though he, or his company, may elect in which class he shall be licensed or registered. The "Branch Manager" plaintiffs and the companies they represent have elected that they be registered as "Company Representatives", and they are therefore ineligible to register or act as "Resident Agents".

(3)

The defendants admit the allegations contained in paragraph three of the complaint.

(4)

The defendants admit the correctness of the allegations contained in the first six subparagraphs of paragraph four of the complaint, but they deny that sections 4222 and 4226 of the Code, as construed and enforced or intended to be enforced by them, in any way prevent the plaintiff companies, their agents in other states, or brokers, from soliciting, negotiating, collecting the premiums for, and delivering in other states the contracts referred to covering in Virginia, provided such contracts have first been submitted to a registered Virginia "Resident Agent" for examination as to their regularity and correctness, and compliance with Virginia laws, and have been countersigned by such a "Resident Agent"; and provided further that such a registered agent has been compensated for his present and future services in connection with such contracts by payment to him of the commissions customarily paid such agent for such services in cases where he himself negotiates a similar contract.

[fol. 28]

(5)

The defendants admit the allegations contained in paragraph five of the complaint, but aver that the basis of classification adopted by said statute is a fair, reasonable, and proper one.

(6)

The defendants admit the allegations contained in the subparagraph one of paragraph six of the bill of complaint, but aver that while it is true that section 168 of the Tax Code was repealed by said 1938 Act, it is also true that by the 1936 Acts aforesaid it was in effect amended and transferred from the Tax Code to the general Code as section 4226a. Defendants further allege that the only material amendment made in said section 4226a in 1938 was the change in the manner of the division of commissions on exchange of business between resident agents of Virginia and nonresident licensed brokers, the 1938 Act providing that the resident agent of Virginia may allow or pay to such nonresident broker a commission not exceeding fifty per cent of the resident agent's commission, whereas the law prior thereto provided that such division should be based on the same degree and proportion as is allowed Virginia agents,

either by custom or the requirement of the statute law of the state in which the licensed nonresident agent or broker resided.

They deny the allegations contained in the third subparagraph of paragraph six of the complaint in so far as same may be construed as alleging an attempt by the defendants to require nonresidents of other states to procure a Virginia nonresident broker's license in order to negotiate in another [fol. 29] state a contract with or for the plaintiff companies, or to be compensated therefor by said companies, and they further deny that the annual license tax imposed by said section 4226a is the sum of one hundred dollars, except in very rare cases where, under the reciprocal provisions of said section, the other state in which the broker resides imposes a tax of one hundred dollars on Virginia residents for a like license. They aver that the average nonresident broker's license tax is $19.54 and that the amount of tax in each case is fixed by the tax charged by the home state of the nonresident Virginia broker.

They deny the allegation contained in the fifth subparagraph of paragraph six of the bill of complaint, which alleges that the defendants construe the words "usual and customary commissions allowed", on contracts or policies appearing in section 4226a, as referring to the entire amount of the usual and customary commissions payable "to brokers or agents out of the premiums on such contracts or policies, for the production of the same", and aver that same does not include overriding commissions paid to general agents, or any commissions paid an unlicensed non-resident agent or broker.

They deny the allegation that they are construing the said section as requiring non-resident unlicensed brokers negotiating in other states contracts of Virginia coverage to have a Virginia nonresident broker's license in order for the plaintiff companies to pay such nonresident a commission for his services, or that they are enforcing or intend to enforce any such construction of said section.

They admit the remaining allegations of this subparagraph.

[fol. 30] (7)

The defendants admit that the "Branch Manager" plaintiffs have countersigned contracts for plaintiff companies without additional compensation as alleged in paragraph

7(a), but aver that in so doing they were not performing the same functions, or undertaking the same obligations, as a "Resident Agent" customarily performs and undertakes by signing same, because said "Branch Managers" owe no duty to the insured to examine the contract from the standpoint of the insured's interest, but only from the standpoint of that of the company; and because the branch managers will not thereafter be under the "Resident Agents" customary obligation to thereafter watch out for the interests, rights and protection of the assured during the life of the contract.

The defendants deny the allegation contained in paragraph 7(b) to the effect that any of the nonresident agents who placed with the plaintiff companies the contracts therein tabulated could have placed same in companies not subject to section 4226a of the Code of Virginia, and aver that in few, if any of the instances so recorded, the nonresident brokers could have placed said contracts in companies not subject to section 4226a. They deny that the persons insured would have consented to such placing of such contracts, or that they will consent to so placing similar contracts in the future.

The defendants have no knowledge of and neither admit nor deny the allegation that there were numerous single contracts for which the commissions paid to nonresident producers amounted to hundreds or thousands of dollars, but [fol. 31] aver that the allegation is wholly immaterial, even if true.

The defendants admit the remaining portion of paragraph seven.

(8)

The defendants deny that the plaintiffs, or any of them, in this proceeding are entitled to secure any declaration of rights involving a judicial construction of the Virginia statutes referred to in the complaint, as alleged in the first subparagraph of paragraph eight thereof.

(a) The defendants deny that the plaintiffs, or any of them, are entitled to an injunction, as alleged in subparagraph (a), which would permit the "Branch Manager" plaintiffs to provide the countersignature on any contracts covering Virginia risks which the said Virginia statute requires shall be provided by a registered "Resident Agent".

Defendants deny that they are construing, or will con-

strue or enforce said statutory provisions to prohibit such "Branch Manager" plaintiffs from also countersigning said contracts, provided same are likewise countersigned by a "Resident Agent", and the other provisions of the said statutes are complied with.

(b) The defendants deny that said statutes, as construed and heretofore enforced, or as the same will be hereafter enforced by them, prohibit the company plaintiffs from "making" in other states, through such agents or brokers as they desire, contracts covering in Virginia, when such contracts are countersigned by registered Virginia "Resident Agents", but aver that all such contracts, within the [fol. 32] meaning of said statutes and particularly of section 4222 of the Code, as construed by defendants, are "made through regularly constituted and registered 'Resident Agents' " when same have been countersigned by such a "Resident Agent".

They therefore deny the right of the plaintiffs to enjoin and restrain the defendants from doing an act or acts which none of these defendants are doing or threatening or intending to do.

The defendants deny that the plaintiffs, or any of them, are entitled to an injunction to restrain the defendants from interfering with the branch manager plaintiffs in performing the acts, or any of them, referred to and set out in subparagraphs (c), (d), (e), (f) and (g) of paragraph eight. All of these acts relate to functions which may be performed only by, or at the instance of or with the acquiescence of, a "Resident Agent" after he countersigns the contract; i. e., the collection of the premium; the receipt of compensatory commissions; the writing and issuing of Virginia coverage contracts by branch managers solely through persons not licensed to act as agents or brokers in Virginia; the division of commissions with such unlicensed persons and a division thereof with licensed non-resident brokers except in accordance with the statute. All of said acts are outside the proper scope and function of a "Branch Manager" both as established by custom and practice, and as prescribed by the Virginia statutes referred to in the complaint.

Defendants aver that the statutory classification hereinbefore referred to which, as construed by them, places these duties and functions solely on a "Resident Agent", and not [fol. 33] on a "Branch Manager" or other officer of a com-

pany, is based upon experience, custom and practice, and is a reasonable classification.

The defendants further aver that it is contrary to the public policy of Virginia to permit the said branch manager plaintiffs to receive commissions for procuring contracts, or to permit the splitting or division of commissions by an agent, entitled by law to receive same, with any person not licensed as a "Resident Agent" or a "Nonresident Broker" in Virginia, or to permit rebates in any form whatsoever.

The defendants deny that the said statutes referred to in paragraph eight of the complaint, as construed and enforced by them, or as intended to be construed and enforced by them in the future, prohibit or prevent the company plaintiffs (as alleged in subparagraph c) from procuring the countersignatures of "Resident Agents" on Virginia coverage contracts made in other states in any cases where, at the time any such contracts are made, there exists a bona fide intention on the part of said companies to collect the premiums therefor, and provided there is no intention to engage in the prohibited practice of "free insurance", or to give any rebates, and this is true regardless of whether the contract is negotiated outside Virginia by or through a nonresident unlicensed broker or any other person; accordingly, the allegations contained in subparagraph (e) that the company plaintiffs are being prevented by said statutes from procuring the countersignature of "Resident Agents" in cases where such a contract is negotiated by a nonresident, unlicensed broker is denied by the defendants.

[fol. 34] The defendants deny that the plaintiffs, or any of them, are entitled to enjoin them from doing any of the acts complained of in said paragraph eight, and deny that the compensation required to be paid to "Resident Agents" who countersign said contracts is incommensurate with the services rendered and to be rendered by them in connection therewith.

(9)

The defendants deny that, as alleged in paragraph nine of the complaint, either the company plaintiffs or the branch manager plaintiffs are deprived of their liberty or property without due process of law by the statutes therein referred to, as construed, enforced and intended to be enforced by the defendants, or that said branch manager plaintiffs are

thereby denied or deprived of the equal protection of the laws for the reasons set forth in paragraph eleven of the complaint, as alleged in said paragraph nine.

(10)

The defendants deny that the "Branch Manager" plaintiffs will be interfered with in the performance of their customary duties as such representatives of their companies, as set forth in subparagraphs a, b, c, d, e, f and g of paragraph ten of the complaint, and deny specifically the allegations with respect to each subparagraph as follows:

(a) The defendants deny that the said "Branch Manager" plaintiffs' services will be rendered any less valuable [fol. 35] to their companies by reason of the requirement that "Resident Agents" countersign and be associated with all contracts of Virginia coverage, for the reason that the actual service to be rendered by them will remain the same as heretofore except for the clerical act of countersigning the contracts. They aver that the effect of the statute associating "Resident Agents" with such contracts and requiring their countersignature is to cause a service to be rendered in Virginia by said "Resident Agents" to the assured which has not, and in the nature of things could not be properly and impartially rendered by such branch managers, both in the examination of the contract at the time of countersignature and thereafter in servicing same, because said branch managers represent the companies exclusively, whereas the "Resident Agents" represent both the companies and the insureds. In this dual capacity they are in a position to see, and should see, that such contracts are fairly and justly entered into, and fairly and justly performed by both the company and the assured. It still continues to be necessary for a "Branch Manager" to perform for his company substantially all the service he has rendered in the past.

(b) The defendants deny the damage alleged in subparagraph (b) of paragraph ten of the complaint, and aver that the company plaintiff cannot justly complain of being required to make contracts with nonresidents through "Resident Agents", who are in a position to and should render such nonresident assureds a local service which, for the reasons set forth in subparagraph (a) above, the

branch managers and other "Company Representatives", in the nature of things, cannot render.

[fol. 36] (c) The defendants deny that the statutory requirement for the collection of premiums, as construed and enforced by defendants as set out in paragraph eight of this answer, will result in any damage of any kind to any of the plaintiffs as claimed in subparagraph (c) of paragraph ten of the complaint.

(d) The defendants deny that any of the plaintiffs have any just or legal ground to complain of any of the matters of alleged damage referred to in subparagraph (d) of paragraph ten of the complaint, and deny that, as a matter of law, they, or any of them, are damaged by reason of any of said matters.

(e), (f) and (g). For the reasons set forth in subparagraph (a) of this paragraph, the defendants deny that the "Branch Manager" plaintiffs are damaged by the matters alleged in subparagraph (e), (f) and (g) of paragraph ten of the complaint, and for the reasons set forth in subparagraph (b) hereof the company plaintiffs are not thereby damaged under the terms of the said statutes as construed and enforced by the defendants, as set forth in paragraph eight of this answer.

(11)

The defendants deny each and every one of the allegations contained in paragraph 11 of the complaint.

(12)

The defendants deny that the penalties imposed by the said statutes (said 1938 Act) are severe, as alleged in paragraph twelve of the complaint, but admit that, unless [fol. 37] enjoined, the defendants will enforce the provisions of said statutes in the manner construed by them as set forth in paragraphs 4, 8, 15, 16 and 17 of this answer, though they deny that if not enjoined they will enforce said statutes in all respects as construed by the plaintiffs in their complaint.

(13)

The defendants deny the allegations contained in paragraph thirteen of the complaint.

(14)

The defendants further answering allege that the word "premium" or the words "insurance premiums" as employed in the complaint, and in this answer, and in the statutes herein involved, are descriptive of the total amount of money required to be paid to a company by an insured as the consideration for the insurance policy or contract; that such premiums are arrived at by the defendant companies in this suit, as well as by other like companies, by establishing a sum of money as a rate to be charged for the protection furnished. The premium rates differ according to the classifications of property and business interests protected, and in each class are primarily based on the loss ratio or experience for that class compiled over a period of preceding years. To this loss cost or loss factor is then [fol. 38] added, (a) a certain sum for home office and company expenses, (b) another sum for taxes, (c) another sum for claim expenses, (d) another sum for field supervision cost, and (e) a final sum for production commission cost. These various sums when added together constitute the total premium to be charged for the protection contracted for. The individual plaintiffs, who are branch managers, are compensated on a salary basis, and their compensation is properly and customarily allocated to that factor or portion of the total rate which is designed to cover office and company expenses. It would be inconsistent with the principles upon which premium rates are built up and formulated for them to receive any portion of the insurance premium, except out of that factor. The factor of commissions included in the rate has in actual practice never been, and cannot properly be, applied to the compensation of those company representatives who are compensated on a salary basis. The commission factor in the premium rate is always a percentage of the total rate or premium, and a percentage of the premium cannot be reconciled with a fixed salary. Therefore, the branch manager plaintiffs cannot, consistently with the principles on which the amount of the premium is arrived at, receive any portion of the percentage commission factor in said rate or premium.

The defendants aver that these principles of rate making enter into and are given effect in the classification of agents and in the other statutory provisions challenged in the complaint.

[fol. 39] (15)

The defendants deny that the provision for premium collection contained in section 4226a of the Code has been enforced or construed by them as requiring a "Resident Agent" to personally collect, or personally see to the collection of, the full premium on any contract, as alleged in paragraph 10(c) of the complaint. On the contrary, the defendants construe said section as intended to prohibit the practices of rebating and free insurance, with the resulting burden on those who do so pay; and in enforcing said provision they consider same to have been complied with whenever a contract is delivered, either by a "Resident Agent", or any other bona fide authorized representative of a company, either within or without the State, under circumstances showing an expectation, in good faith, on the part of the person delivering the policy that the full premium will be paid "within a reasonable time thereafter".

(16)

The defendants deny that they have construed, are construing, or will construe or enforce the provisions of the statutes contained in the 1938 Act, referred to in the complaint, in the manner alleged in the complaint, but aver that they will enforce same in accordance with the following interpretations, which are defendants' interpretations of said statutes:

(a) Contracts are made "through regularly constituted and registered agents or agencies of such companies" as required in Code section 4222 when such contracts are [fol. 40] countersigned by a "Resident Agent" as required by said section, even though he does not negotiate the contracts or deliver same, or collect the premiums;

(b) The making of the contract in this manner "through" such a "Resident Agent or Agency" imposes on such agent or agency the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to the company, in connection therewith, as customarily apply in cases where the "Resident Agent" himself negotiates a similar contract;

(c) A "Resident Agent" may lawfully countersign a contract at the request of his company or its "Branch

Manager", or any other "Company Representative" or nonresident officer, though the officer be not licensed as a representative. In such a case the contract is made "through" such "Resident Agent".

(d) A "Resident Agent" may lawfully countersign a contract at the request of any licensed, registered "Resident Agent" or licensed "Non-Resident Broker", and may pay to any such broker as much as one-half of his commissions on said contract;

(e) A "Resident Agent" through whom a contract is made, (as in [a] supra), must receive the full amount of the commission which he customarily receives on similar contracts, whether the contract is negotiated by the "Resident Agent" through whom made, or negotiated by the company, or by a non-resident agent or broker for the company.

[fol. 41] (f) A "Resident Agent" through whom a contract is made, as above set out, may not lawfully rebate to the insured any part of his commission, or pay any part thereof to any person, whether a resident of Virginia or not, unless such person is licensed and registered in Virginia either as (1) a "Resident Agent" or (2) a "Non-Resident Broker";

(g) A company is not prohibited by Virginia law from making in other states Virginia coverage contracts, or from availing itself of the services of unlicensed non-resident agents or brokers in negotiating same through such agents or brokers, or from paying commissions for such services, provided the contract is made "through" a Virginia "Resident Agent", as in (a) supra.

(h) A Virginia non-resident broker's license confers on the licensee the privilege of soliciting in Virginia either companies, or prospective assureds, or both, to make contracts; and also the privilege of making contracts so secured, or secured through negotiations outside of Virginia, through Virginia "Resident Agents" as set out in (a), supra, and renders such licensee eligible to receive from such "Resident Agents" as much as one-half of the commissions received by such "Resident Agents", on any contract made through such "Resident Agents" as in (a) supra.

(17)

The defendants aver that the Virginia statutory classification of persons engaged in that branch of the insurance, [fol. 42] casualty and surety business which is related to the procurement or production of policies or contracts, grows out of and is based on the well known customs, usages and practices of the business, as is more specifically set out in paragraph 2, supra. That pursuant to the Code sections and statutes contained in said 1938 Act, referred to in the complaint, as construed by the defendants, the State, acting through the defendants, issues five separate licenses, or certificates of registration. These fall into two main divisions; first, persons who are employed by a company or group of affiliates as their own representatives on a salary basis and who neither before nor after the passage of said Act have been compensated on a commission basis, and are not now being so compensated.

There is only one type of license issued to representatives of this type. It is denominated a "certificate" authorizing the holder thereof to act in the capacity of a "State Agent, Special Agent or Company Representative". The "Branch Manager" plaintiffs are "Company Representatives" and are holders of certificates of this kind. This same certificate is also issued to what are generally known as, and defined in the said statute as, "State Agents" and "Special Agents".

Defendants aver that, construing the aforesaid statutes in the light of the said well established customs, usages and practices of the business the general obligations, duties and functions of these three types of company representatives are as follows:

(a) A "State Agent" is one who travels about over the state looking after certain interests of the company which he represents, such as appointing "Resident Agents" for [fol. 43] the company; instructing them in regard to the special facilities his company has to offer in the various lines of insurance as compared to other companies; assisting the "Resident Agent" in the inspection of risks; attending to the prompt collection of company balances from local "Resident Agents" which they are due to remit for premiums collected; soliciting the resident agents to place risks with his company in cases where the resident agent represents other companies also; and attending to matters

of like nature involving the company's interest as distinguished from the interests of the insured. He reports to the home office or a regional office. He is compensated exclusively on a salary basis. The state agent usually has also control and supervision of any "Special Agents" that may be working for his company in that state. While the "State Agent" may solicit "Resident Agents" as above set forth, he has no authority under his license to solicit a prospective assured, though he may assist a "Resident Agent" in doing so, but he may not receive any part of the commissions.

(b) A "Special Agent" is one who travels about the state doing work quite similar to that of a "State Agent", and occupies a status as an assistant to the "State Agent". He is under the supervision of the "State Agent". The "Special Agent" may or may not be a resident of the state in which he works, and may work in two or more adjoining states. Like the "State Agent" he is compensated exclusively on a salary basis.

(c) A "Branch Manager" is the local representative of a company, and manages the company's office, which is [fol. 44] maintained and operated at the company's expense; while he may rarely solicit prospective assureds, when he does so he is acting in the character or capacity of assisting a "Resident Agent", and the latter is the one who must close the contract, countersign same, and receive the commissions payable for producing the contract. The aid in soliciting which the "Branch Manager" renders the "Resident Agent" is usually for the purpose of inducing the "Resident Agent" to place the contract with the "Branch Manager's company instead of with some other company the "Resident Agent" represents. The "Branch Manager" possesses the authority to appoint "Resident Agents", and supervise them. His general duties are to attend to or supervise all the business of the company in the state except the actual producing of contracts, and the settlement of claims or losses. He does not receive any commission, but is compensated solely by a salary, and his compensation is represented by a different factor in the premium rate from that which covers commissions for a "Resident Agent". His compensation is included in that factor of the total premium designed to cover home office, or company expense. He represents only one company, though in some cases

where a parent holding company divides its business into subsidiary companies, he may represent a group of such affiliates.

The "Branch Manager" also represents the company in supervising the nature of risks contracted for by the "Resident Agent" to the end that the company shall not thereby be subjected to any improper hazards. He also supervises the keeping and auditing of the company's accounts, books and records in the branch office.

[fol. 45] And the defendants aver that the second class of persons engaged in the business of procuring or producing insurance policies or contracts are those who occupy a status similar to independent contractors, and the respective licenses or certificates issued by defendants, in their official capacities to persons classified in said second group, and their general duties, obligations and functions as interpreted by the defendants, are as follows:

(d) A "Resident Agent" is a resident of Virginia who maintains his own office in Virginia. He primarily performs the functions of a producer of business or premiums. He usually represents several insurance companies. He solicits prospective assureds and, when successful, usually has the choice of placing the contract with any one of the companies he represents, or he may place same with a company he does not represent through a "Resident Agent" of such other company. Either he or another "Resident Agent" must countersign the contract before it can become legally effective. He is the legally recognized owner of the business solicited and developed by him, and usually controls the renewals of these contracts. He keeps a watch over the property or other subject of the coverage, and advises the assured with reference to contract and rate changes to meet changing conditions, and assists him in securing same. He appears before rate making bodies in the interest of the adoption of fair and just rates and classifications of risks. He confers with the assured so as to prevent possible violations of contract conditions and provisions. He acts as a mediator between the company and the assured and, [fol. 46] in the event of a loss or of disagreement, uses his best efforts to the end that the obligations of the contract shall be justly and fairly performed. He has no power to appoint other resident agents. He is compensated for his services solely on a commission basis, receiving a percent-

age of the total premium. This commission is provided for as a separate factor in the total premium. He may not divide his commissions or pay any part thereof to any person except to another Virginia resident agent, or a nonresident broker licensed to solicit contracts in Virginia.

(e) "Resident Agency".

This license or certificate entitles a partnership or corporation, composed of a group of "Resident Agents" to transact the same business as a "Resident Agent".

(f) "Solicitor".

A "Solicitor" is one employed by a "Resident Agent" to solicit insurance policies or contracts. He is compensated on a commission basis, receiving a percentage of the commissions produced by him. The policies or contracts he produces must be made "through" the "Resident Agent" employing him, and can be countersigned only by a "Resident Agent". The "Solicitor" may perform such other functions of a "Resident Agent" as may be required or approved by his employer.

(g) "Non-Resident Broker".

The license or certificate of a "Non-Resident Broker" confers on such nonresident the privilege of soliciting policies and contracts of insurance inside the borders of Virginia, and also authorizes the licensee to negotiate such [fol. 47] policies and contracts "through" "Resident Agents", and receive as much as one-half of the "Resident Agent's" commissions. The licensee is also authorized to negotiate through "Resident Agents" Virginia coverage policies and contracts secured by the licensee as a result of his solicitation outside the state, and to receive a like part of the resulting commissions.

(18)

The defendants aver that the foregoing interpretations by the defendants of the statutory classification of persons engaged in the production division of the fire insurance, casualty insurance and surety businesses is a proper and reasonable classification and is based on the customs, usages and practices which have prevailed for many years in Virginia as well as generally throughout the United States.

(19)

The defendants aver that the omission from said statutes of a resident broker's license or certificate is proper and reasonable; that during the five preceding license years ending April 30 of each year the number of persons licensed as resident brokers has been as follows: 1935, three licensees; 1936, three licensees; 1937, three licensees; 1938, five licensees, and 1939, four licensees. The defendants further aver that said licensees, with few exceptions, have been engaged primarily in some form of financing or similar business, and the holding of the broker's license has [fol. 48] permitted said licensees to receive a part of the agents' commissions on policies and contracts the licensees were thereby enabled to place, resulting in many cases in a modified form of rebate, which is contrary to the public policy of the Commonwealth of Virginia.

(20)

The defendants aver that all contracts of insurance and surety which the plaintiff companies make outside of Virginia, which cover property, persons or risks in Virginia, are made in the exercise of the privileges and franchises granted to them as licensees of the Commonwealth to transact their respective businesses therein. All such contracts contemplate the possibility, a large percentage of them the probability, and many of them the certainty that said companies, as well as the assureds, will perform acts in Virginia in connection with said contracts and with the obligations assured thereunder. Particularly is this true in the cases of contracts requiring inspections or inspection service. In all cases where a loss is incurred, it is contemplated that the plaintiff companies may investigate the circumstances and conditions under which such loss occurs or an event happens which results in consequent liability upon the company. And the defendants aver that it has been the customary practice of all companies engaged in businesses similar to those of the plaintiff companies to do and perform, in connection with said contracts, acts in Virginia of [fol. 49] the nature which are above alleged as contemplated in the making of said contracts.

(21)

The defendants are advised and aver that every one of the United States has enacted laws which require insurance

and surety contracts covering risks therein, made by licensed foreign or alien companies, to be countersigned by a resident licensed agent of the state, and the laws of Virginia have so provided for many years. The purpose of this requirement has been to encourage the association of local Virginia commission agents with nonresident agents and brokers in the making and servicing of such contracts, and thus not only to prevent such Virginia agents from being deprived of their fair share of legitimate Virginia business, but to secure for the benefit of all persons contracting for protection against risks in this State the services of a resident impartial agent who owes a duty to protect the interests of the assured as well as those of the company. This service, the defendants aver, cannot be properly and efficiently performed by a nonresident agent or broker, or by a company branch manager or other salaried representative.

Defendants aver that it has been the experience in Virginia that the statutory provision prior to 1938, which permitted Virginia "Branch Managers" to countersign the contract has proven wholly ineffectual and has failed to accomplish the desired purposes of associating an impartial agent with the transaction. It is only by a requirement, such as that contained in said 1938 Act, by which the countersignature of a local commission agent is made necessary, [fol. 50] that the protection which the public policy of Virginia requires can be adequately afforded the agent and the assured. And the defendants aver that it was to carry this public policy of the State into effect that the statutes were amended in 1938 so as to require such countersignature.

(22)

The defendants aver that the business of soliciting insurance policies and contracts of the type embraced within the statutes challenged in the complaint is a paramount business in Virginia; that there are many thousand "Resident Agents" engaged in said business and their earnings amount annually to many millions of dollars; that said agents employ many persons as solicitors, stenographers and clerks; that many thousand persons, to-wit, fifty thousand, including said agents and employees and their families are dependent upon the commissions received from soliciting such insurance contracts for their livelihood, and

that many millions of dollars are invested, and must be invested in the office plants and equipment of said "Resident Agents" in order for them to be able to render proper and efficient service to their clients, and to the public generally, in connection with contracts made through them.

The defendants further aver that the interests and general welfare of the Commonwealth of Virginia, and the happiness and prosperity of her citizens, are materially and vitally affected by the failure or success of the persons engaged in soliciting said insurance contracts, as aforesaid, [fol. 51] and will be materially promoted by the prosperity of their said business.

The defendants further aver that the practice which has been followed by the plaintiff companies of entirely eliminating the Virginia "Resident Agents" from participation in a very large part of the most profitable business of this kind, and of making the choice insurance contracts covering Virginia risks through nonresident brokers and agents not licensed in Virginia, and permitting said nonresidents to receive all the commissions resulting from such contracts, is harsh, unfair and unjust to their Virginia "Resident Agents", has been the source and cause of much dissatisfaction and disagreement between them and their said companies, and has proven harmful, detrimental and partially destructive of said agents' businesses in this State.

The defendants further aver that during a period of approximately nine years business and economic conditions in Virginia have not been prosperous, but have been such as to bring about much hardship, deprivation and poverty, so that it has been necessary for the State to expend many millions of dollars for relief to the unemployed, and that this condition would have been materially alleviated and additional employment provided if the plaintiff companies and other insurance companies licensed in Virginia had not followed the unjust, unfair and discriminatory practice of eliminating the said Virginia "Resident Agents" from participation in said choice Virginia coverage insurance and surety contracts. The defendants further aver that the amount of the commissions which thus unfairly and un- [fol. 52] justly have been diverted from "Resident Agents" of Virginia, and — which they, and others who would have been able to engage in the business, have been deprived, is many millions of dollars, the deprivation of which has ma-

terially retarded the recovery of prosperity in the State, and has operated to the detriment of the State and her welfare and that of her citizens.

Wherefore, these defendants pray that no temporary or permanent injunction be issued in this action against the enforcement of any portion of the provisions of said 1938 Act; that said Act of 1938, and each of the provisions thereof be adjudged as not contrary to or in violation of the Constitution of the United States; that no provisions of said Act be adjudged as void and of no effect; and that said action be dismissed with costs to the defendants in this behalf sustained.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and as such Attorney for the Defendants, State Library Building, Richmond, Virginia.

[fol. 53] IN UNITED STATES DISTRICT COURT

January 5, 1939.

Honorable Robert N. Pollard, United States District Judge, Richmond, Virginia.

DEAR JUDGE POLLARD:

Counsel in the case of Osborn v. Ozlin will hand you a form of order which has been drawn to meet their wishes, and which I have signed, postponing the hearing from February 1, until March —, 1939. We suggest that the case be set for Monday, March 13, if this is convenient to you and to Judge Way. This will give sufficient time for the taking of the depositions and will also allow a sufficient interval before the convening of the April Term of our Court on April 3 for the preparation of an opinion. Will you please fill in the 13th day of March, if it suits you, and communicate with Judge Way.

I have taken the liberty of saying to counsel that we do not want to consider the case on ex parte affidavits, but desire to confine ourselves to depositions, regularly taken, with witnesses subjected to cross examination, and that it will be satisfactory to us if the testimony is taken prior to the hearing in the form of depositions whether the witnesses reside in Virginia or not. I have also requested counsel to get all of the evidence in shape so that as far as may

be, it will not be necessary to take further testimony after the hearing; if it appears at the hearing that other evidence is needed we can then decide what form it shall take.

I have also requested counsel to file briefs on both sides and have them in our hands a week before the hearing.

With kind regards, I am,

Sincerely yours, (Signed) Morris A. Soper.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR HEARING, ETC.

Entered and filed Jan. 10, 1939

The undersigned judges, having been organized as a three judge court under the order of the Honorable Robert N. Pollard, District Judge of the District Court of the United States for the Eastern District of Virginia, which was entered on the 5th day of December, 1938 to hear and determine the application of the plaintiffs herein for an interlocutory injunction, and said order providing for the convening of the court on the 1st day of February, 1939, and counsel for the defendants desiring further time for the taking of testimony and the filing of depositions herein prior to the hearing, and counsel for the plaintiffs stating that he desires to press his application for an interlocutory injunction, and to be heard thereon as soon as practicable, and in the meantime that the restraining order shall stay in effect, it is ordered this 10th day of January, 1939:

That the hearing on the motion for an interlocutory injunction be postponed until the 20th day of March, 1939, and that the temporary restraining order heretofore granted herein by the Honorable Robert N. Pollard, District Judge, on the 5th day of December, 1938, shall continue in effect until the further order of the said three-judge court.

(Signed) Morris A. Soper, United States Circuit Judge. Luther B. Way, United States District Judge. Robert N. Pollard, United States District Judge.

[fol. 54a] IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

WILLIAM H. OSBORNE, et als., Plaintiffs,

v.

THOS. W. OZLIN, et al., etc., et al., etc., Defendants

Before Soper, Circuit Judge and Way and Pollard, District Judges

OPINION

SOPER, Circuit Judge:

The bill of complaint in this case prayed that the State Corporation Commission and the Commissioner of Insurance of the State of Virginia be enjoined from enforcing the provisions of Ch. 218 of the Acts of the General Assembly of Virginia of 1938 on the ground that the Act violates the Constitution of the United States, so that an enforcement thereof would deprive the plaintiffs of their constitutional rights. A temporary injunction pending final determination and a permanent injunction were prayed. Accordingly, a temporary restraining order was passed, and the court was organized to hear and determine the matter in controversy. Testimony was taken and arguments of counsel heard, upon which the court has made the findings of fact and conclusions of law herein set out.

The statute amends and reenacts Sections 4222, 4226-a and 4235 of the Code of Virginia relating to insurance, adds new sections as follows: Section 4221-a, defining certain terms, Section 4235-b, requiring registration of solicitors, and Section 4235-c, exempting certain reciprocal or inter-insurance exchanges from the provisions of the Act. Section 168 of the Tax Code of Virginia is repealed. Sections 4222 and 4226-a are the objects of attack in this suit.

Section 4222 forbids insurance companies, legally authorized to do business in Virginia, except life, title and ocean marine insurance companies, to make contracts of insurance or surety on persons or property therein except through regularly constituted and registered resident agents, and provides that no such contract shall be written, issued or delivered unless it is duly countersigned by a resident agent. No state agent, special agent, company repre-

sentative or other salaried officer or manager of an insurance company, except a mutual insurance company, is permitted to countersign any contract of insurance or surety.

Section 4226-a provides that no resident agent may write, countersign or deliver any contract of insurance or surety upon persons or property in the state, unless there be collected at the time of writing or delivery, or within a reasonable time thereafter, the full premium on the contract, and the resident agent shall be entitled to and shall receive the usual and customary commissions allowed on such contract. A resident agent is not permitted to write a contract produced by a non-resident broker not licensed by Virginia, and may not pay a licensed non-resident broker more than fifty per cent of the resident agent's commissions. A non-resident broker is any non-resident who solicits for compensation contracts of insurance or surety on persons or property located in the state, except contracts of life, title or ocean marine insurance.

Section 4221-a defines an "agent" as any individual, who solicits, negotiates or effects on behalf of any insurer, contracts of insurance or surety; and defines a "resident agent" or "resident insurance agent" as an individual whose residence and principal place of business are located within the state, and who is authorized to transact business as an insurance agent and to contract in the name of the insurer. "State agent", "special agent" or "company representative" means any person who acts for and on behalf of an insurer in the solicitation, inspection or servicing of risks assumed by the insurer. These definitions do not apply to life insurance companies or life insurance agents.

[fol. 54b] Sections 4231 and 4180 of the Virginia Code subject an insurance company which fails to comply with the provisions of the statute to fines, or suspension or revocation of its license to do business in Virginia, or both.

The plaintiffs in the suit are thirty-four foreign or alien stock companies licensed to conduct in Virginia the casualty insurance or surety business, or both; and three individuals who have their residence and principal place of business in the state as salaried agents and Richmond branch managers of certain company plaintiffs. These individuals were licensed by Virginia as resident insurance agents prior to June 21, 1938, the effective date of the statute in question, and since that time have been licensed as

special agents or company representatives. The defendants are officials of Virginia, charged with the administration of the insurance law of that state. The National Association of Insurance Agents was allowed to intervene as amicus curiae.

From the evidence in the case offered to show the effects of the enforcement of the statute, we find the following facts with regard to the production and servicing of casualty insurance and surety contracts.

Production of Casualty and Insurance Contracts

Contracts are secured by persons known as producers, who solicit the public. The producer is either an agent or a broker, licensed by the state in which he acts. An agent is certified and sponsored by a company and, in a sense, is a representative of the company; but as he is paid a commission on the business he produces, which depends in large measure upon his influence in his community, and the services he renders his clients, he is to a great extent the agent of the insured. A broker, on the other hand, has no affiliation with any company. His obligation runs only to the insured; but like the agent, his success depends upon his salesmanship and his reputation and experience as an insurance man.

The producer must induce the insured to buy the insurance through him, and must inform the insured as to the exposure and the coverage. The producer must have the good will and confidence of the insured, particularly when the prospect must disclose confidential information as to his business bearing upon questions of exposure and coverage, as in workmen's compensation or surety contracts. The successful producer must have a sound technical knowledge of these questions, and often must procure special rates for his clients in order to hold their business. The solution of these questions may be a routine matter or a complicated task. Hence if they are determined, the procurement and acceptance of the policy, that is, the "underwriting", is the next step in the process, and if the producer is authorized to bind the company, he must determine on its behalf whether to make the contract.

Policyholders are regarded as the customers or clients of the producer. During the life of the policy he performs every service to build up and maintain a clientele. He ex-

tends credit for payment of the premium, explains the provisions of the policy to the assured, assists the filing and recovery of a claim of loss, and acts throughout as the mediator between the assured and the company.

Brokers are rarely found except in large cities. In New York they produce virtually all the contracts, for the demand for insurance is so concentrated and has assumed such tremendous proportions that insurance is bought rather than sold. The producer represents the buyer, and remains free of company affiliation in order to use the assured's concentrated bargaining power to its best advantage when dealing with the various companies.

The production process is the same when the contract is produced in one state to cover risks in another. Richmond agents produce insurance to cover risks in other parts of Virginia and in other states, and New York brokers produce contracts to cover exposures in all parts of the country. In fire insurance, it has been the custom for many years for the producer to associate with the contract and to split the commission with an agent who does business in the vicinity of the risk. There is no such custom in the casualty and surety business; a producer of casualty or surety contracts covering exposures in remote places usually relies exclusively on the company to service the contract, and a New York broker generally places the insurance with the company best able to do so. For this reason, a producer seldom insures against a risk with a company not admitted to do business in the state where the exposure exists.

Servicing the Contract

One of the most important services afforded assured is what is known as "servicing the contract", that is, the discovery and elimination of unsafe conditions, whereby the question of loss and the cost of insurance is diminished. [fol. 54c] For this purpose, the insurance company maintains a staff of engineers who inspect the risks covered by the company. The producer not only ascertains whether the assured is receiving proper attention from this servicing personnel, but also makes his own investigations and recommendations in order to reduce the client's rating and expense. These services by brokers and agents are an essential part of the production process in meeting the competition for business.

Field Supervision

Another essential part of the production process is known as "field supervision". The companies employ field supervisors to stimulate and guide the activities of local producers, to accept or reject orders for contracts from producers to underwrite, prepare and check contracts, to collect premiums and generally to represent the company in a particular territory. The two major classes of field supervisors are: (1) The general agent, who is licensed as a producing agent and is compensated solely by commissions based on premiums on contracts made by him or by producers appointed by him and acting under his supervision. In New York City, where most of the contracts are produced by brokers, the general agents do not appoint producers, for it is more profitable not to compete with brokers but to underwrite the insurance produced by them. General agents are men of knowledge and experience who devote their full time to the business. In Virginia, the general agents produce the bulk of the local business. (b) The branch office manager or salaried company representative who has the same powers and duties as the general agent, but is compensated by a salary and receives no commission for producing business. Whenever a branch manager negotiates a policy directly with an assured, the rule of the National Association of Insurance Agents, in which most insurers have acquiesced requires that the contract be closed through one of the manager's commission agents who is paid the full producer's commission. The manager's function is to develop his territory through ordinary producing agents and to supervise and assist them in the production of desirable business.

[fol. 54d]

Production Cost

The "production cost" of getting the business is divided into two factors: (a) "Acquisition Cost", or the commission paid the producing agent or broker. This commission, which varies in amount and is on the average of 13.5% of the premium, is normally the only compensation that the producer receives. It is allocated as the recipient sees fit. No stock company will negotiate a contract directly with an assured without paying a producer's commission either to a broker or a non-salaried agent. (b) "Field Supervision Cost", that is, the amount paid the general agent for field supervision, and the limit which the company may

spend for maintaining its branch offices. This factor is usually about 6.5% of the premium. When a general agent produces a contract, he is given the entire production cost. When a broker, solicitor or other commission agent produces a contract, he receives the acquisition cost, and the general agent or branch manager under whose supervision or within whose territory the producer is working receives the field supervision cost. The maximum amounts which may be paid these various individuals are regulated by an association known as the Acquisition Cost Conference, to which nearly all casualty and surety companies belong.

Non-Resident Production of Contracts Covering Virginia Risks

The practices described are followed in the production of policies outside Virginia to cover risks in that state. The statutory restrictions upon this business form the crux of this suit. From 10 to 20% of the total premiums of each company plaintiff for Virginia coverage is paid on contracts produced outside of Virginia, i.e., negotiated, ordered, underwritten, prepared, checked, executed, issued and delivered outside of Virginia. During 1937 twelve of the company plaintiffs received premiums of $410,967.62 on policies of Virginia coverage produced outside the state and paid commissions of $70,860.96 to non-residents for the production thereof. Ten of these companies (the figures for the other two are not available) during the first half of 1938 received $183,727.38 for such policies, and paid $31,635.53 to non-residents for this production. The total premiums paid to the plaintiff companies during 1937 on contracts produced outside Virginia amounted to approximately $1,371,574.

The party assured by a policy produced outside of Virginia is occasionally a natural person who keeps his records and manages his business outside the state, and has interests in Virginia and elsewhere. But ordinarily, the assured is a large national corporation, incorporated in any of the states, with its central office in New York, Chicago or some other great business center. One company plaintiff insures a mercantile corporation against the risk of public liability arising from the operation of 258 stores scattered throughout Virginia. Nation wide manufacturers, distributors, financial institutions, contractors, dairy companies,

public utilities and others purchase contracts outside of Virginia to cover exposures which they have in that state. These contracts are produced almost exclusively by brokers operating in large cities where the national corporations have their principal offices, and the great majority of this business is produced in New York City, which has become the center for the insurance business in this country. Many of these out-of-state producers are licensed by Virginia as non-resident brokers.

Practically all of the policies produced outside Virginia and insuring persons or property therein are what may conveniently be called multiple-coverage, hot-potch or master policies, for the reason that they insure against numerous exposures of the same type which are usually situated in other states as well as Virginia. It is unusual for different lines of insurance, such as fire, workmen's compensation, automobile or burglary, to be combined in the same contract.

It is as important that the insurer be licensed to do business in Virginia when a contract for Virginia coverage is produced in another state as when it is produced by a resident agent. The fact that a company is licensed to do business in the state of coverage is an important factor in the placing of insurance, for if the insurer does not have such a license, the assured loses the benefit of all company services in the state of the exposure, which is the very place where he needs them most, and the assured also can not sue to recover a loss in that state.

The Reason for Out-of-State Production

An individual non-resident, subject to exposures in Virginia, is likely to purchase his insurance through a friend at his residence or place of business. The officers of a national corporation are also influenced by this personal element; but the chief reason for the concentration of their insurance buying in New York or other large center is the reduced cost. A great number of large corporations em- [fol. 54e] ploy high salaried officers, whose sole function is to handle their insurance because advantages inher in the concentration of insurance buying as in the mass purchase of commodities. The average rates for fidelity insurance is 50¢ per hundred; but if a bond for millions of dollars is

purchased to cover the employees of a nation-wide chain of stores, then the rate is 25¢ or 30¢ per hundred.

The solution of the insurance problems of an assured subject to numerous exposures is greatly facilitated by the centralization of insurance buying. It is easier to insure against many risks by the procurement of one policy and the payment of one premium therefor; and the assured is better able to place the responsibility for proper coverage of its risks in its insurance manager.

Other conveniences and economies result from the centralization of insurance buying. In many localities of exposure, there are no resident agents capable of handling a large corporation's insurance. Such a corporation does not have in the localities of its exposures representatives authorized and qualified to attend to its insurance matters, or the records necessary for transacting the business. Multiple coverage policies are usually rated on the accident and loss record for the combined risks, and such rating cannot be determined properly if each exposure must be insured separately through local resident agents.

The controlling reason, however, for the out-of-state production of hotchpotch or master policies covering persons or property in Virginia is the lower rate obtained for Virginia risks. This result is accomplished by some form of special rating, e.g. "retrospective rating", whereby the premium is retroactively reduced or increased, according to the favorable or unfavorable experience of the risk; "experience rating", which is based upon the application of an inflexible formula to the history of the losses of the assured, or "equity rating", which involves some flexibility of judgment in the formulation of rates lower than those developed by a fixed formula, and usually includes some reduction in the amount of the producer's commission. Reduction in the cost of the insurance of a large corporation is sometimes secured by inviting the brokers to make competitive bids. The broker usually gets the business who offers the best price, and he frequently contributes to this result by reducing the customary commission. In general, the lower premiums involved in the "rating" and "pricing" of policies of large corporations are the result of quantity purchasing, improved loss experience from scientific servicing of risks, and intelligent underwriting of combinations of coverages.

Effect of Non-Resident Production in the State of Virginia

Insofar as inspection and engineering services preceding or accompanying the formation of a contract covering a Virginia risk are concerned, and insofar as the services of inspectors and adjusters are required in case of loss after the execution of the policy, there is no difference between a contract produced within and a contract produced without the state. The ability of the company to perform the services in the state of coverage necessarily affects the placing of the insurance.

The production of from 10 to 20% of Virginia coverage outside the state is of course attended by a loss of business and of revenue by insurance agents resident in Virginia. In 1937 $9,143,833 was paid in premiums on casualty and surety contracts covering Virginia risks. Producers' commissions at 13.5% amounted to $1,234,417; and assuming that 15% of the coverage was produced outside the state, the resident agents of Virginia lost $185,161 which they would have earned if the business had been produced within the state.

[fol. 54f] Producers in New York and other large business centers, by reason of their location, have a great competitive advantage over the Virginia agents. The latter do not have the opportunity to acquire the information and experience that will acquaint them with the insurance market and render them expert in the rating and underwriting of multiple risks. A statutory requirement compelling the association of the resident agent with all Virginia risks would tend to overcome the handicap under which he now labors.

Under present out-of-state production technique, Virginia casualty and surety companies, not doing business on a national scale, cannot compete with large foreign corporations for 10 to 20% of the insurance on persons and property within the state, since the small domestic companies cannot offer reduced premiums on hot-potch and interstate contracts with Virginia coverage included.

The interests of Virginia residents, merchants, industrialists and business men, who are not subject to numerous risks in various states, are also affected. These persons compete with national corporations for Virginia business and are handicapped by being required to pay more for their Virginia insurance than their large competitors who buy hotchpotch policies outside the state. The local grocer,

for example, pays more for his insurance than does the chain store.

Out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of the state. Virginia has many statutes relating to the casualty insurance and surety business. No foreign corporation may make such contracts on persons or property in Virginia unless it obtains a certificate of authority to transact business from the Virginia Corporation Commission by filing two copies of its charter, paying the requisite entrance fee and fulfilling certain other statutory requirements. Virginia Code Sections 3847 and 4176. The Commission may prevent any insurance or surety company, which is insolvent or fails to comply with any provision of law, from doing business in Virginia. Section 4180. No insurance company or agent shall pay, or allow, as an inducement to have any contract of insurance or surety issued, any rebate of premium or any special favor or inducement not specified in the contract. Section 4222-c. Every company issuing workmen's compensation or automobile insurance or contracts of surety must file schedules of its rates with the Corporation Commission and procure its approval of the same. If, upon a hearing, the Commission feels that the rates proposed by any company are unfair, unreasonable or discriminatory, then it may prescribe a different schedule of rates. Section 1887 (75), 4326-a-1, 4350-3. In these three lines where rates for Virginia coverage are fixed by law, "equity" and "retrospective" ratings are not allowed. Automobile liability policies issued to public carriers must be filed with the Corporation Commission, and workmen's compensation policies must be filed with the Industrial Commission. All of these laws apply to insurance produced outside the state as well as to contracts produced within.

The out-of-state production of Virginia coverage makes it difficult to enforce certain of these laws, particularly those dealing with insurance rates. A good example of virtual nullification of Virginia's rate fixing statutes is a contract covering risks in various states and rated on an interstate basis, such as a policy covering risks in Virginia and West Virginia. If West Virginia does not regulate the rate, it is easy to dilute the Virginia fixed rate by setting an arbitrary figure as the price for the West Virginia coverage. In the same way, retrospective rating applied to the West Virginia coverage can in effect operate to reduce the premium for

the Virginia coverage. Thus an interstate rate may result in great savings to the assured, in spite of the fact that it is against the law of Virginia for the assured to be granted such reductions. It is equally difficult to enforce the law (Code Section 4222-c) against rebates and special favors when the policy is produced beyond her borders. In a contract covering risks in Virginia and other states, it is easy to grant a rebate and attribute it to risks in states other than Virginia when, in reality, but for the rebate or favor, the contract would not have been purchased. In the absence of some one within her jurisdiction connected with the production process, it is difficult for Virginia to prevent violations of these statutes.

The Probable Effect of the Resident Agent Requirement of the Act of 1938

In estimating the effect of the Act upon the insurance business, the experience of Virginia, under prior acts passed for the same general purpose should be considered. The Acts of Virginia of 1895-6, p. 258, required in effect that contracts for fire insurance on property in Virginia should be made through resident agents. The Acts of 1902, p. 738, made similar provision for casualty and surety contracts covering Virginia risks; and the codification by the Acts of [fol. 54g] 1906, p. 122, sections 34 and 38, required all insurance on persons or property in the state to be placed through resident agents. In 1921, the foregoing legislation was interpreted by the State Insurance Commissioner to require that all insurance on persons or property within Virginia should be issued under a policy separate from insurance on persons or property in any other state; that if the Virginia risk should be covered under a general cover contract form, it should include only Virginia property; that the rates should be those applicable to risks covered as published by the Rating Bureau of which the insurer was a member; and that the policy should be issued through and signed by a resident agent who should receive the usual commission, but this last provision did not apply to company employees who received a fixed salary. See also the Acts of 1936, p. 169.

Prior to the Act of 1938, the resident agent who countersigned a policy produced outside the state performed no useful function in the production, underwriting or servicing of the contract. The plaintiffs' brief states: "Companies

have never observed the mandate of the statute not to make contracts (outside of Virginia) except through licensed Virginia agents. * * * When, because of the compulsion of the law of a state of coverage, the company must secure the countersignature of a licensed agent there, he may countersign only a 'law rider' or a 'countersigning endorsement'. He may sign one of a number of 'underlying contracts' retained by the company, while a 'master contract' is delivered to the assured." Customarily, contracts produced outside of Virginia have been countersigned by the general agents and branch office managers without compensation. They have not performed any of the services habitually offered the assured by a resident producer; but these services have been rendered by the non-resident producer and by the companies' salaried employees, such as engineers and adjusters, particularly the latter, when the matter has been one that could not be handled by a producer remote from the locality of the coverage. Prior to the Act of 1936, the Virginia resident agent statute requirements have had no real effect on the production of the contracts.

The Act of 1938 is more drastic than its predecessors, in that it requires that the resident agent be paid and retain at least one-half of the customary commission, and forbids a salaried representative of the company to countersign the policy. The Act will not affect the production of insurance contracts covering a single or a small number of risks, since these are placed almost entirely through resident agents, but it will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent. The amounts now paid the out-of-state producer are not shown to be excessive, and it is not to be expected that he will render the same services for one-half of the compensation.

Whether or not, in view of the Act of 1938, Virginia risks will still be covered by master policies produced outside the state depends on whether the advantages for purchasing the insurance in New York or other business center will

outweigh the increased cost of the Virginia insurance. The probability is that in many cases, the saving will still exceed the increased expense unless the Act prevents the cutting of rates denounced by the Virginia statutes. For example, if the usual rate of 50¢ per hundred on a fidelity bond is reduced to 25¢ per hundred in the case of a Five Million Dollar fidelity bond of a chain store organization, as the evidence indicates, the reduction in cost of the Virginia coverage would far exceed one-half of the usual commission which the resident agent is required by the statute to retain.

Under the practice prevailing prior to the passage of the Act of 1938, the countersigning by a salaried representative of the company of a policy produced outside the state was only a perfunctory act, unaccompanied by any service to the assured or by any compensation to the signer. It does not follow that the same practice will prevail under the present statute which requires the retention of one-half of the commission by the resident agent. On February 13, 1939, the Virginia Association of Insurance Agents, Inc., passed a resolution with reference to the Act wherein it was declared that in all cases where a Virginia agent is associated in writing a Virginia fire, casualty or surety policy, he shall familiarize himself with all the pertinent facts relating thereto, examine the policy to ascertain whether it is correct as to rate and coverage and best adapted to the needs of the assured, and throughout the life of the policy render the same obligation to the assured with respect to servicing the contract as if the Virginia [fol. 54h] agent alone had negotiated the contract. On February 27, 1939, the chief examiner of the Virginia Insurance Bureau made an interpretation of the statute, wherein he held that a Virginia resident agent, countersigning a contract, has imposed upon him ipso facto "the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff in connection therewith, as customarily applied in cases where the resident agent himself negotiated a similar contract."

[fol. 54i] This resolution and this interpretation were offered in evidence by the defendant, and were objected to by the plaintiffs as nothing more than self-serving arguments as to the meaning of the statute, promulgated after the institution of the pending suit on November 10, 1938.

We are in accord with the view that these documents should have no weight in determining the controversy, except insofar as they constitute arguments on the part of the defendants as to the interpretation of the statute, and its probable effect. Considered in this way, they are not without some persuasive force. It is true that the plaintiff companies and the assureds have been content with the prior practice, and have felt no desire or need for the services of the local agent in the production and servicing of master policies; if the local agent must be paid one-half of the commission, he will doubtless be called upon to render such services as he may be qualified and able to perform, even though the statute merely provides that the contracts shall not be made except through resident agents and except with their countersignature thereon. Such agents could be of assistance in checking the coverage and premium, servicing the contract, adjusting claims of loss, and acting in general as the mediator between the assured and the insurer in the locality of the exposure.

The plaintiff objected to evidence offered by the defendant as to certain customs in the fire insurance business with reference to a payment of a share of the commission to the Virginia agent in case of a contract produced outside the state covering a location therein. From 5 to 10% of the amount of the premium has been customarily paid to the local agent, regardless of the connection or lack of connection of the agent with the transaction. In our opinion the evidence was material, and the objection should be overruled. Conditions with reference to casualty and surety insurance differ from those that prevail in fire insurance, but nevertheless the evidence of the custom voluntarily adopted in one line has some bearing on the reasonableness of the Act which imposed a similar custom as a duty on another line of the same general business.

The plaintiffs contend that the statute is invalid because it attempts to regulate the making, outside of Virginia, of contracts of insurance, in that it provides that insurance companies shall not make contracts of insurance or surety on persons or property within the state except through regularly constituted and registered resident agents; and that no resident agent may write, countersign, issue or deliver any such contract, upon persons or property within the state, unless there shall be collected the full premium on the contract; and that the resident agent shall be entitled

to, and shall receive the usual commission, and shall not allow or pay to any licensed non-resident insurance broker more than 50% of the commission. It is said that the State of Virginia, by the passage of the Act which applies to contracts executed without the state as well as contracts executed therein, assumes the right to exercise beyond its territorial limits legislative authority which exceeds the limitations imposed by the federal constitution; and that the Act is not saved by the fact that the contracts of insurance to which it relates cover exposures and involve acts of performance within the state.

It is a well established general principle that the due process clause of the Fourteenth Amendment "denies to a state any power to restrict or control the obligations of contracts executed and to be performed without the state, as an attempt to exercise power over a subject matter not within its constitutional jurisdiction"; and this is true although one of the contracting parties is within the state. Alaska Packers Ass'n v. Commission, 294 U. S. 532, 540. This principle has been applied to statutes affecting contracts of insurance executed beyond the confines of the state; Allgeyer v. Louisiana, 165 U. S. 578; St. Louis Compress Co. v. Arkansas, 260 U. S. 346; New York Life Ins. Co. v. Head, 234 U. S. 149, 161; New York Life Ins. Co. v. Dodge, 246 U. S. 357; Fidelity & Deposit Co. v. Tafoya, 270 U. S. 426; Connecticut General Co. v. Johnson, 303 U. S. 77. It has been held that the mere residence within the state of an assured under a life policy executed outside the state, or the mere existence of property in the state covered by a policy executed outside the state, does not of itself empower the state to regulate or modify the terms of the contract or justify the imposition of tax on premiums. New York Life Ins. Co. v. Dodge, 246 U. S. 357; Aetna Life Ins. Co. v. Dunken, 266 U. S. 389; St. Louis Compress Co. v. Arkansas, 260 U. S. 346; Palmetto Ins. Co. v. Connecticut, 272 U. S. 295, 304; Compania De Tabacos v. Collector, 275 U. S. 87. But it does not follow that the state has no jurisdiction under any circumstances over contracts of insurance made outside of the territory which relate to subject matter within its borders or affect the interests of its citizens. The border line between what is permissible and what is not is not always easy to draw; but specifically, it has been held that a state tax upon premiums received by a foreign insurance company from business done without the state

may be assessed upon premiums paid to the company outside the state by the residents thereof. The tax was held to be a tax upon the privilege of doing business within the state. Equitable Life Society v. Pennsylvania, 238 U. S. 143. The court said: (146-7)

"It being established that the relation of the foreign company to domestic policy holders, constituted doing busi- [fol. 54] ness within the meaning of the statute, the question is whether the company may be taxed in respect of it, in this way, whatever it may be called. We are dealing with a corporation that has subjected itself to the jurisdiction of the State; there is no question that the State has a right to tax it and the only doubt is whether it may take this item into account in fixing the figure of the tax. Obviously the limit in that regard is a different matter from the inquiry whether the residence of a policy holder would of itself give jurisdiction over the company. The argument of the state court is that the Company is protecting its insured in Pennsylvania equally whether they pay their premiums to the Company's agent in Philadelphia or by mail or in person to another in New York.

These are policies of life insurance and according to the statement of the plaintiff in error are kept alive and renewed to residents of Pennsylvania by payments from year to year. The fact that the State could not prevent the contracts, so far as that may be true, has little bearing upon its right to consider the benefit thus annually extended into Pennsylvania in measuring the value of the privileges that it does grant. We may add that the State profits the Company equally by protecting the lives insured, wherever the premiums are paid. The tax is a tax upon a privilege actually used."

This case was followed by Compania De Tabacos v. Collector, 275 U. S. 87, where the court sustained a tax upon premiums from fire insurance policies on property within the Philippines, which premiums were received by a foreign insurance company licensed to do business in the islands. The court said: (p. 98).

"Does the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines, they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the

imposition upon the assured of a tax of one per cent upon the money paid by it as a premium to the London Company? We may properly assume that this tax, placed upon the assured, must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment, and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under Equitable Life Society v. Pennsylvania, 238 U. S. 143."

See also Palmetto Ins. Co. v. Connecticut, 272 U. S. 295. Compare, Hartford Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 where it was held that a statute of limitations of the state where the breach occurred and the suit was brought upon a contract of suretyship, did not supersede the limitations specified in a valid contract of insurance made outside the state covering defalcations anywhere, since the performance in the state of suit involved at most only the casual payment of money and a state may not draw to itself control over contracts validly made elsewhere regardless of the relative importance of the interests of the form with those created at the place of contract. See also Alaska Packers Ass'n. v. Commission, 294 U. S. 532, 547. The test is this, according to Mr. Justice Brandeis dissenting in New York Life Ins. Co. v. Dodge, 246 U. S. 357, 382-3:

"Is the subject-matter within the reasonable scope of regulation? Is the end legitimate? Are the means appropriated to the end sought to be obtained? If so, the act must be sustained, unless the court is satisfied that it is clearly an arbitrary and unnecessary interference with the right of the individual to his personal liberty."

It will have been observed that in the aforegoing cases, it was considered an important circumstance if the insurance company, like the plaintiff companies in the pending case, was doing business under license from the state whose legislation was the subject of attack. This feature was emphasized in Bothwell v. Buckbee, Mears Co., 275 U. S. 274 which concerned a policy of strike insurance covering a

risk in Minnesota and written by an insurance company not licensed to do business therein. The contract required the performance of certain acts, and gave the company the [fol. 54k] right to do other acts within the state, all of which constituted activities of the insurance business which an unlicensed company was forbidden to perform. These circumstances, the court held, justified the refusal of the state to enforce the contract.

In Equitable Life Ins. Society v. Pennsylvania and Compania De Tabacos v. Collector, supra, a tax on premiums was sustained because of activities of the insurer in connection with the contract, performed or contemplated, constituted an exercise of its license to do business in the state. These authorities are pertinent on the question of jurisdiction although some of them relate to taxation with which we are not concerned in the pending case, for taxation is regulation. Compania De Tabacos v. Collector, 275 U. S. 87, 95, and whatever a state in the exercise of its police power may regulate, it may subject to taxation. Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425, 426.

As it has been shown in the findings of fact that the contracts of the plaintiff companies on persons or property within Virginia call for or contemplate the performance of certain acts within the state, and it follows that the state has power to regulate them, the question is whether the statutory requirement that the insurance contract be made through a resident agent, who shall be paid at least one-half the commissions, has a reasonable relation to the risk covered by the contract and to the performance within the state of the obligations undertaken by the insurer.

The plaintiffs contend that the sole purpose of the statute is to profit the resident agent, to the detriment of the non-resident broker, the salaried resident agent, the insurance company and the insuring public. That one purpose and effect is to increase the income of the resident agent is undeniable, but we think that that is not the only purpose or probable effect. The important object of the statute is to require that all policies shall be placed by a resident agent, who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract. Of this main purpose the requirement of countersignature by the resident agent is only a minor and incidental part, of little importance except as indicating that

the resident agent shall become an active factor in the business, especially when coupled with the major requirement that he shall be entitled to the whole commission of which he must retain one-half. The latter requirement, it is reasonable to conclude, will probably lead to greater participation on the part of the resident agent and he will be expected to render to the company and to the assured all the services of which he is capable. The tendency will be to create a more efficient agency force with the result that the local interests of the insured will be better served.

[fol. 541] It is of equal importance that the creation of greater responsibility on the part of the resident agents whom the state can reach and control, will assist the state in putting into effect statutes passed for the regulation of the insurance business. It will not be so easy for the foreign insurance companies, the non-resident brokers and the insured to evade the prohibitions against rate cutting and rebating of commissions, designed to protect the insured resident in Virginia and the local insurance companies against the great advantages of business of national scope. Information as to illegal practices, which the resident agent will acquire, may be made avai-able to the state. The effects of the statute may be less favorable than this prognosis indicates, but it is not an unreasonable one, and in any event, the burden is on those who attack the statute to show that it is devoid of legitimate purpose.

We conclude that Virginia is not without jurisdiction to pass a statute affecting the production of out-of-state contracts issued by companies licensed to do business in the state. Is the method adopted by the statute of 1938 so arbitrary and unreasonable as to be beyond its authority, that is to say, is it a proper exercise of the police power of the state which may be used to promote the public health, morals, safety, convenience and prosperity? Eubank v. Richmond, 226 U. S. 137, 142; Nebbia v. New York, 291 U. S. 502-3; West Coast Hotel Co. v. Parrish, 300 U. S. 379. We think that the Act is within the power of the state. The plaintiffs complain of the exaction of one-half of the commission as the share of the resident agent; but it cannot be denied that such an agent can render services of substantial value. The actual practice in the fire insurance business in Virginia and elsewhere in the United States is of great significance in this respect. For many years it has been cus-

tomary for fire policies to be signed by the resident agent, and he has been paid the full commission if he has negotiated the policy, and one-half commission if he has not negotiated the policy. In view of this experience, how can it be said that the application of a like rule to the casualty and surety business is arbitrary?

The provision for countersignature needs little discussion. Such a requirement is quite common throughout the United States. The present statutory provision that the signature of a commission rather than a salaried agent shall be affixed to the policy is imposed as a safeguard to make certain that the commission agent, whose cooperation in the enforcement of the insurance statutes is desired, shall have knowledge of the issuance of policies and of his right to share in the commissions and in the subsequent activities under the contract. The salaried agent has no real complaint of discrimination against him since it is admitted that his association with business originating outside of the state has been entirely nominal and perfunctory in the past, unaccompanied by any real share in the business, or any compensation for his signature.

We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact, the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business.

These circumstances are not without material bearing in considering the reasonableness of the statute; but when they

are weighed against the considerations above outlined, the conclusion still remains that the statutory provisions are not so unreasonable and arbitrary as to render the legislation void. It is for the legislature of the state to determine what economic policy will best serve the interest of its citizens, and to this end it may regulate or even prohibit a particular type of business in order to promote what it deems to be the public welfare. In passing upon the right of the state to impose on chain stores a graduated tax which increased in rate in proportion to the number of stores, the Supreme Court had this to say in Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425:

"• • • In the exercise of its police power the state may forbid as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in [fol. 54m] such manner as to abate evils deemed to arise from its pursuit. Whatever a state may forbid or regulate it may permit upon condition that a fee be paid in return for the privilege, and such a fee may be exacted to discourage the prosecution of a business or to adjust competitive or economic inequalities. Taxation may be made the implement of the exercise of the state's police power; and proper and reasonable discrimination between classes to promote fair competitive conditions and to equalize economic advantages is therefore lawful.

If, in the interest of the people of the state, the legislature deemed it necessary either to mitigate evils of competition as between single stores and chains or to neutralize disadvantages of small chains in their competition with larger ones, or to discourage merchandising within the state by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation. The appellants, by incorporating in some other state, or by spreading their business and activities over other states, cannot set at naught the public policy of Louisiana. The claim is, essentially, that even if local evils flow from the appellant's methods the state cannot control those evils because its power is limited to conditions created by the members of the chain found within the State. The conclusion is that the state must treat these stores as if they were something different from

what they really are, since to do otherwise would be to reach beyond the borders of Louisiana for the measure of the tax. The argument answers itself. The policy Louisiana is free to adopt with respect to the business activities of her own citizens she may apply to the citizens of other states who conduct the same business within her borders, and this irrespective of whether the evils requiring regulation arise solely from operations in Louisiana or are in part the result of extra-state transactions. It is not a denial of due process to adjust such license taxes as are here involved to meet the local evil resulting from business practices and superior economic power even though those advantages and that power are largely due to the fact that the taxpayer does business not only in Louisiana but in other states."

In their original brief the plaintiffs refer to the decision in Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U. S. 459, where it was held by a divided court upon petition and answer of the parties, and without evidence, that a Georgia statute, relating to insurance companies, was unconstitutional because it discriminated arbitrarily and unreasonably against stock companies by requiring them to write the policies through commission agents, while permitting mutual companies to write policies through salaried agents. But the plaintiff insurance companies in their brief pointed out that no evidence has been offered in the pending case to show that there is such a similarity between the various classes of insurance companies as makes it arbitrary to classify them differently, and hence the plaintiffs place no reliance upon the decision referred to, and make no attack upon the Virginia statute because its provisions apply to stock, casualty, insurance and surety companies, and the salaried agents thereof, but do not apply to life, title, ocean marine or mutual insurance companies or their salaried agents.

The reference to mutual insurance companies in the Virginia Act is found in section 4222-a, where it is provided that no state agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, covering persons or property within the state, except contracts of life, title and ocean marine insur-

ance; and it may seem that this provision of the statute at least should be declared invalid. But, we are satisfied that the injunction prayed should not on this account be granted. It was stated in paragraphs 9 and 11 of the complaint that the plaintiffs do not claim that any provision of the Virginia Act violates the rights of the company plaintiffs or of the agent plaintiffs, because it denies them the equal protection of the laws, except insofar as the Act is designed to promote the interests of the general body of the Virginia stock, fire, casualty and surety commission agents, with the [fols. 54n-55] view to unjustly enrich them at the expense of the salaried agents, the companies, the insuring public and the Commonwealth of Virginia. No evidence indicating unreasonable or arbitrary discrimination in favor of mutual companies has been submitted. On the other hand, the evidence shows that mutual companies, with immaterial exceptions, do not have commission agents, and the inclusion of such companies within the regulatory provisions of the statute would be meaningless unless they were required to operate on different principles. It is the boast of stock companies that the salaried agent of the mutual company is not able to afford as valuable a service to the insuring public as the commission agent of the stock company, since the latter is less the representative of the company, whose policies he places, than he is the representative of the insured. The plaintiffs "cannot complain if in fact the discrimination embodied in the law is but a perpetuation of a classification created and existing" by their own acts, Borden's Co. v. Ten Eyck, 297 U. S. 251, 263, and in fact they make no complaint in this respect.

Our conclusions of law are that the requirements imposed by the Act of 1938 upon the plaintiffs with regard to contracts of insurance made outside of Virginia are not beyond the jurisdiction of the state; that the provisions of the Act are not arbitrary and unreasonable or in violation of the federal Constitution, and that the prayers for interlocutory and permanent injunctions should be denied and the bill of complaint should be dismissed.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFFS FOR NEW TRIAL OF ISSUES RAISED BY APPLICATION FOR INTERLOCUTORY INJUNCTION OR FOR RE-HEARING OF SAID APPLICATION, FOR AMENDMENT OF OPINION FILED SEPTEMBER 6, 1939, AND FINDINGS AND CONCLUSIONS THEREIN, AND FOR ADDITIONAL FINDINGS AND CONCLUSIONS

Filed October 2, 1939

To the Honorable Judges of the Statutory 3-Judge Court:

Plaintiffs move the court for a new trial of the issues raised by the application for an interlocutory injunction or for a re-hearing of said application, for amendment of the opinion filed September 6, 1939, and the findings and conclusions therein, and for the making of additional findings and the statement of additional conclusions.

The grounds of the motion and the relief sought are as set forth hereinafter.

Grounds of Motion for New Trial or for Re-hearing; and Relief Sought

Plaintiffs respectfully submit that the court by its opinion of September 6, 1939, has not conformed to Rule 52 of the Rules of Civil Procedure, has made incorrect findings of fact, stated incorrect conclusions of law, and has failed to make findings of fact and state conclusions of law, which should have been made and stated, all as more particularly set out hereinafter under the heading "Grounds of Motion for Amendment of Opinion and Findings and Conclusions and for Making Additional Findings and Stating Addi-[fol. 57] tional Conclusions; and Relief Sought". The relief sought is to procure the modification of the opinion filed September 6, 1939, in the respects set out under the said subsequent heading.

Grounds of Motion for Amendment of Opinion and Findings and Conclusions and for Making Additional Findings and Stating Additional Conclusions; and Relief Sought

1. In the opinion the court does not find the facts specially and state separately its conclusions of law, nor sim-

ilarly set forth the findings of fact and conclusions of law which constitute the grounds of the refusing of the interlocutory injunction.

NOTE: For convenience of reference to the opinion, a copy of the same is attached hereto as a part hereof, and upon that copy, plaintiffs have numbered the fifty-four paragraphs of the opinion from 1 to 54.

If the substance of the opinion is to remain as at present, to which plaintiffs object and except, plaintiffs pray that the paragraphs containing findings of fact and conclusions of law shall be numbered, and that the opinion shall be rearranged and headings inserted, as follows, viz:

(a) Paragraph 8 to precede paragraph 7 and be preceded by the heading "Special Findings of Facts".

(b) Paragraph 50 to be brought forward in the opinion so as to come under the heading "Special Findings of Facts".

(c) Paragraph 54 to be brought forward in the opinion to follow the matter under the heading "Special Findings of Facts", and to be itself preceded by the heading, "Conclusions of Law".

(d) A heading "Comment" or "Opinion" to follow the matter under the heading "Conclusions of Law", to be followed by such parts of the opinion as do not constitute findings of fact or statements of conclusions of law.

2. Certain paragraphs of the opinion appear to contain not only matter intended to constitute findings of fact, but [fol. 58] also comment or argument. Plaintiffs pray that the matter of the one kind shall be placed under the heading "Special Fndings of Facts", and the matter of the other kind be placed under the heading "Comment" or "Opinion". The paragraphs referred to include: 8, 9, 14, 17, 19, 20, 31, 33, 35, 36, 37, 38, 53.

3. Plaintiffs submit that statements now in the opinion, specified in Schedule A herewith, are inaccurate and for the reasons there stated, plaintiffs pray for their alteration or omission as there shown.

4. Plaintiffs submit that the court should have made findings of fact as indicated in Schedule B herewith, and pray that they shall be made.

5. Plaintiffs submit that conclusions of law now in the opinion, specified in Schedule C herewith, are incorrect and pray for their alteration (and the alteration of parts of the opinion supporting the same) as there shown.

6. Plaintiffs submit that the court should have stated conclusions of law as indicated in Schedule D herewith, and pray that they shall be stated.

Respectfully submitted, (Sgd.) Andrew D. Christian, Charles K. Woltz, 907 East Main Street, Richmond, Virginia; John Lord O'Brian, William I. Morey, 37 Church Street, Buffalo, New York, Attorneys for Plaintiffs. Christian, Barton & Parker, 907 East Main Street, Richmond, Virginia. Slee, O'Brian, Hellings & Ulsh, 37 Church Street, Buffalo, New York. Of Counsel.

[fol. 59] (Copy of Opinion of Court Incorporated Herein as Exhibit—See Page 54-A.)

[fol. 60] SCHEDULE "A" TO MOTION

(Inaccurate Statements in Opinion, Reasons for Modifications, and Modifications Prayed by Plaintiffs)

1. In paragraph 13 of the opinion it is said a producer "of casualty and surety contracts" covering in remote places usually relies exclusively on the company to service the contract, etc.; and that for this reason a producer seldom insures against a "risk" with a company not admitted in the coverage state. In paragraph 20 it is inferred that a Virginia license is important "when a contract for Virginia coverage" is produced; and it is there said that licensing in the state of coverage is an important factor "in the placing of insurance", as in its absence the assured loses the benefit of company services in the coverage localities when he needs them most and cannot sue it there. In paragraph 25, it is said that the ability of the company to perform the services in the state of coverage "necessarily affects the placing of the insurance."

The above statements are not accurate, when made with reference to numerous types of contract to which the chal-

lenged statute applies, e.g., fidelity, plate glass, burglary, health and accident, numerous surety obligations, and excess insurance. They should be limited to types of contract to which they are properly applicable, e. g., workmen's compensation, automobile, boiler, machinery, public liability, certain surety obligations. This can be conveniently accomplished by limiting each above-quoted expression by the phrase "of a type requiring servicing in coverage localities". And the types of contracts which require, and those which do not require, servicing in coverage localities should be stated.

2. In paragraph 16 it is said that the general agent "or branch manager" under whose supervision or "within whose territory" a producer is working receives the field supervision cost; and that "nearly all casualty and surety companies" belong to the Acquisition Cost Conference.

As the branch manager never receives any commission, the reference to him should be deleted, adding, if desired, [fol. 61] at the end of the sentence", or, if the producer is working under the supervision of a branch manager, it is available to the company for the payment of the expense of the branch office". The reference to "casualty and surety companies" should be to "all stock casualty and surety companies licensed in New York".

3. The first sentence of paragraph 24 reads as follows: "The controlling reason, however, for the out-of-state production of hotchpotch or master policies covering persons or property in Virginia is the lower rate obtained for Virginia risks."

This sentence is inaccurate, first, because there is no evidence that any single reason usually controls the selection of the producer and the resulting state of production; next, because Virginia producers can and do sell hotchpotch or master policies covering persons or property in Virginia (and/or in other states); and obtain for the Virginia risks (and/or those of other states) as low rates as out-of-state producers may obtain; and lastly, because the assured is not concerned with the rate for any single state as Virginia, but only the aggregate cost. The sentence should be revised to read: "An important reason, however, for the use of a hotchpotch or master policy covering persons or property in Virginia, and/or other states, or covering exposures in

different parts of Virginia and/or other states, is the lower rate obtained for the entire coverage."

It is also said near the end of paragraph 24 that when brokers are invited to make competitive bids, the broker who offers the best price usually gets the business "and he frequently contributes to this result by reducing the customary commission". This is not accurate, since the evidence shows such reductions only in cases where the risk is "equity" rated and only when the company has imposed upon the broker, as a part of the rating process, the reduction of commission. (PRB 52-54, 60). The quoted language should read "and if a risk is equity rated by the company, it may, and frequently will, require that the broker contribute to the result by reducing his commission."

4. Paragraph 28 discusses the competitive disadvantages of "Virginia casualty and surety companies, not doing busi- [fol. 62] ness on a national scale". It should be omitted, because there is no evidence of the existence of any such companies; nor will the challe-ged statute enable such to do business on "a national scale".

5. The first sentence of paragraph 30 is: "Out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of the state." The first sentence of paragraph 31 is "The out-of-state production of Virginia coverage makes it more difficult to enforce certain of these laws, particularly those dealing with insurance rates". The last sentence of paragraph 31 is: "In the absence of someone within her jurisdiction connected with the production process it is difficult for Virginia to prevent violations of these statutes."

There is no evidence to support these statements. A contract may as readily be produced within Virginia as without Virginia, covering risks in Virginia and West Virginia, and in which an arbitrary price is fixed for the West Virginia coverage, or retrospective rating of the West Virginia risks is provided for, effecting savings to the assured, and in connection with which any granted "rebate" is attributable to the West Virginia risks, when but for the "rebate or favor" the contract would not have been purchased. Whether it is produced within or without Virginia, she may with equal ease prevent any violation of her statutes, because she has the company within her borders, ex-

amines it periodically, and may subject it to fines and penalties, as well as revocation of its license, should it violate her laws. In truth she doesn't concern herself at all with rates charged for coverage in other states, as shown by her practice at this very time, and since the effective date of the challenged statute, as mentioned in the next paragraph hereof. And neither does she regulate at all the rates for the coverage of many casualty lines to which the challenged statute applies. The subjects of these sentences should not be "Out-of-state productions" and "In the absence of someone within her jurisdiction connected with the production process", but should be "The coverage under one contract of exposures within and without Virginia", and "In cases where a contract covers exposures within and without Virginia":

[fol. 63] 6. In paragraph 32 an inaccurate finding is made as to a 1921 ruling of the Insurance Commissioner that insurance on persons or property in Virginia shall be issued under a policy separate from insurance on persons or property in any other state. This finding should have stated that the 1921 ruling has since been modified by rulings of defendants still in effect (PRB47-48), permitting workmen's compensation risks within and without the state to be insured by one policy, if there be a separate schedule or declaration for the Virginia coverage written in compliance with the Virginia resident agency laws, and permitting a fire policy to cover values both within and without Virginia if the premium on the underlying policies on the Virginia values shall be at the legal rate, and requiring only that underlying policy to be filed with the rating bureau.

7. In paragraph 33 it is said that before the effective date of the challenged statute contracts covering in Virginia and produced outside of Virginia have been countersigned in Virginia by the general agents and branch office managers without compensation". In the first sentence of paragraph 36, it is said the branch manager's countersignature has been unaccompanied "by any compensation to the signer". (In the last sentence of paragraph 49, the statement is repeated.)

The statement as to general agents is inaccurate because they have always received compensation of the small amount deemed appropriate for the service; it is incorrect as to branch managers because the countersigning is a part of

the duty, for the performance of which they receive their salaries.

The statement as to general agents should recognize that they have been especially compensated though by small sums; and as to branch managers should not be made, or if made in any form, should state that they countersign as a part of their duty for the performance of which they receive their salaries, and without special compensation for each act of countersignature.

8. In paragraph 34 it is said that the challenged statute "will not affect the production of insurance contracts covering a single or a small number of risks, since these are placed almost entirely through resident agents". This is [fol. 64] inaccurate, and should be deleted because the statute forbids all contracts wherever produced to be countersigned by salaried agents, and it is frequently important to the interests of assureds, companies, and Virginia producers, (PB159-160) for the salaried agents to countersign contracts produced within Virginia by a resident agent who is not able to furnish a needed countersignature at the necessary time and place.

9. In paragraph 48 in speaking of the custom in the fire business, it is said that the resident agent, not negotiating the policy, has received "one-half of the commission". Upon the evidence, as correctly indicated in paragraph 38, he has received as commission "one-fourth to one-half of the commission", and the statement in paragraph 48 should be changed accordingly.

[fol. 65] SCHEDULE "B" TO MOTION

(Additional Fact Findings Prayed by Plaintiffs)

1. Numerous ones among the company plaintiffs, including those represented by the agent plaintiffs, have large, valuable and expensive field forces and plants in Virginia which cannot be removed therefrom without destruction, and have had such plants for some years prior to the enactment of the challenged statute. (Stip. par. 11, p. 12.)

2. The Virginia Association of Insurance Agents, Inc., caused the 1938 statute to be drawn and introduced in the

Legislature and successfully urged its enactment in order to stop a prior existing practice of salaried resident agents countersigning contracts covering in Virginia and produced outside of Virginia by non-resident agents and brokers, and as they claimed, "save for Virginia local agents, commissions justly theirs". It was represented by the members of the Association to members of the Legislature that the statute would not affect insurance costs but would bring annually to Virginia agents many thousands of dollars which otherwise would remain with such non-resident producers. The defendants accepted the views of the members of the Association and supported the bill, to "get them what they wanted". It is generally considered that the only purpose of such statutes is to procure the payment of commissions to agents in states of coverage, which otherwise would not be paid to them. (PB13-19.)

3. A casualty or surety agent is usually an agent for only one company, unlike a fire agent who is usually an agent for many companies. A casualty or surety agent is ordinarily not granted by his company the exclusive right to be its agent in a given territory, as a fire agent is. If a fire contract be produced within Virginia covering at a single location therein removed from the place of production, the fire company makes a commission payment to an agent in the locality of coverage; if there are several coverage localities, [fol. 66] such a payment will be made to an agent in each locality, whether in the same or in different states. Fire agents in many localities are organized into local bodies called "boards", the rules of which forbid their members to act for companies failing to recognize what are considered the territorial rights of the members to receive commissions on business covering in the territory though not produced therein. Whatever may be the locations of casualty or surety coverage and its producer, neither the producer nor the company ever requires assistance from an agent or broker other than the producer in the writing of the contract, though in the fire business it frequently occurs that such assistance is required and is furnished. (PB20-22.)

4. After the making of a casualty or surety contract, and throughout its term, its producer is the sole medium for dealings between the company and the assured as to matters relating to the nature and scope of its coverage. (PB53-54, 104-105, 106-109.)

5. The amount of the commission of a producer is determined by the percentage of a premium allowed therefor in the construction of the rate of premium; it is usually retained by the producer for his own purposes though in rare instances these may include the use of a part of it as determined by him to procure assistance from agents or brokers in distant coverage localities in the rendering of services to an assured; in such cases he selects his assistants, designating the services to be performed and the manner of performing them. (PB89-92, 74, 108, 110-111; PRB22-23.) The producer usually controls the selection of the company with which the assured is to contract (PB54; S14; D1793); and may readily place it in one not affected by the challenged statute, e. g., a mutual company. (PB34-35; D100, 1794.)

6. The field supervision factor is the only factor in a casualty or surety premium from which money can properly come to maintain field supervision. Field supervision is an integral part of the business. The essential purpose for which this factor is designed and allowed in a premium is [fol. 67] defeated if it should be diverted to the purpose of paying to a Virginia countersigner the whole or part of the commission required by the challenged statute to be paid to him. To so divert it would not relieve the company of the expense of field supervision in which the countersigning agent can take no effective part. (PB95-97.)

7. A contract produced outside of Virginia and insuring persons or property therein, will frequently cover in various parts in Virginia. It usually covers all exposures of the assured of a particular kind, with a schedule stating separately the various states of coverage and locating the various parts of the risk. (PB28-29.) According to the interpretation by defendants of Section 4222, it is permissible for a company to make outside of Virginia a contract covering in Virginia and other states, if the Virginia coverage is evidenced by a separate underlying Virginia policy, schedule, or declaration, countersigned as required by that section. (D1125, 1148; PB29; PRB47-48; PB78.)

8. As the challenged statute is construed and enforced by the defendants, contracts are made "through regularly constituted and registered agents or agencies" of the companies, as required by Section 4222 thereof, when such contracts are countersigned by resident agents as required by

said section, even though they do not negotiate the contracts or deliver same, or collect the premiums. (Answer 16-a.)

9. On August 20, 1938, the defendant Bowles ruled that an agent may "delegate the privilege of countersignature to an office employee by power of attorney". This ruling did not restrict the delegation to an employee qualified to supervise the contents or form of the contract. (PB82.)

10. Under all forms of contracts, inspection, engineering, and safety work is optional with the company, as under many forms, claim service is. (Exs. 4-7, C, D.) The terms of contracts are so short and losses so infrequent, that as to many contracts there may fairly be said to be a heavy balance of probability that there will be no act performed by the company anywhere as a consequence of having made a given contract. (Exs. 39, 40; PB31, 105-106.)

[fol. 68] 11. Due to the frequency with which each agent plaintiff has furnished countersignatures, the aggregate value of the countersignature services of each agent plaintiff has been very great, though the value of furnishing a single countersignature was trivial (Complaint 7-a, not denied in answer). The prohibition against a salaried agent countersigning materially decreases the value of his services to his company. (PB89) It is frequently important to the interests of assureds, companies, and Virginia producers for the salaried agents to countersign contracts produced within Virginia by a resident agent who is not able to furnish a needed countersignature at the necessary time and place.

12. The statutes of Virginia have provided to the defendants as the administrators of her insurance laws full power to apprise themselves by convenient and effective methods of the legality or illegality of all actions and transactions of insurance companies doing business therein, which she has thought proper to regulate. Pursuant to such statutes the expenses of the supervising processes are borne by the companies. There are periodic examinations of the companies. (PRB57-58, 79; D1128-1131)

13. Some non-resident producers of contracts covering in Virginia do not procure licenses as non-resident brokers from Virginia, and the company plaintiffs frequently are not able to require them to do so. Many of those who do so are persons who do not come into Virginia to solicit or do

other acts, but have procured licenses solely in order to qualify themselves as persons at whose requests Virginia countersignatures may be furnished and to whom Virginia countersigners may pay or allow parts of commissions. (Stip. par. 12)

[fol. 69] SCHEDULE "C" TO MOTION

(Conclusions of Law which are Incorrect and the Alterations Prayed therein)

1. The conclusion that "the requirements imposed by the Act of 1938 upon the plaintiffs with regard to contracts of insurance made outside of Virginia are not beyond the jurisdiction of the state;" should be altered to express the contrary conclusion.

2. The conclusion that "the provisions of the Act are not arbitrary and unreasonable or in violation of the Federal Constitution" is incorrect and should be altered to express the contrary conclusion.

3. The conclusion that "the prayer for interlocutory and permanent injunctions should be denied and the bill of complaint should be dismissed" is incorrect and should be altered to express the conclusion that the prayer for interlocutory injunction should be granted.

Note: The statements in paragraphs 45-49, and 51, which support the conclusions herein submitted to be incorrect, should be altered so far as necessary to be consistent with the contrary conclusions.

[fol. 70] SCHEDULE "D" TO MOTION

(Additional Conclusions of Law Submitted to be Proper and Prayed by Plaintiffs to be Made)

1. The provision of the statute which forbids salaried agents to countersign contracts covering in Virginia and disqualifies them from furnishing countersignatures required by the statute, when considered in the light of its application to contracts produced within the State of Virginia, violates the rights of the agent plaintiffs because it deprives them of their liberty and property without due

process of law, and denies them the equal protection of the laws, and violates the rights of the company plaintiffs because it deprives them of their property without due process of law.

2. The provision of the statute which forbids countersigners of contracts produced outside of Virginia to allow or pay to non-resident brokers or agents not licensed by Virginia who shall have produced said contracts, any portion of any commission, and prevents the company plaintiffs from procuring said allowances or payments by Virginia countersigners of said contracts to said non-resident brokers and agents, violates the rights of the agent plaintiffs for the reasons stated in paragraph 1, supra, and violates the rights of the company plaintiffs for the reasons there stated.

[fol. 71] NOTICE

To the Honorable Abram P. Staples, Attorney General of Virginia, and as such, Attorney for the Defendants, State Library Building, Richmond, Virginia:

Please take notice, that the undersigned will bring the foregoing motion on for hearing before the court at the Court-room of the District Court of the United States for the Eastern District of Virginia, in the United States Post Office Building, City of Richmond, State of Virginia, on the 12th day of October, 1939, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

(Sgd.) Andrew D. Christian, Attorney for Plaintiffs.

Due service of the above-mentioned motion is acknowledged this 2nd day of October, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 72] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFFS FOR INJUNCTION PENDING APPEAL—Filed October 2, 1939

To the Honorable Judges of the Statutory 3-Judge Court:

Plaintiffs move the court that if the court shall enter an order or judgment denying an injunction as prayed for by

the complaint herein, the court shall grant said injunction during the pendency of an appeal from said order or judgment. The grounds for this motion are that plaintiffs intend to prosecute promptly and with due diligence, an appeal to the Supreme Court from any such order or judgment; that in the absence of an injunction pending appeal, plaintiffs will suffer substantial, immediate, continuous, and irreparable damage from the necessity for compliance with the challenged statute; that not only will business practices of plaintiffs be required to be substantially changed, in the absence of said injunction, in material ways, but the same is so of the practices of all stock casualty and surety companies, brokers, and agents concerned with contracts produced outside of Virginia and covering therein, and of the assureds under said contracts. And the doubtful questions involved in the action at bar exist also in states other than Virginia, with similar statutes to the Virginia one, in none of which are statutes similar to the Virginia statute being enforced, pending a contemplated decision by the Supreme Court in the action at bar; so that if the Virginia statute [fol. 73] should be enforced pending appeal, attempts to enforce such similar statutes in other states would likely ensue with consequent multiplicity of expensive and tedious litigation, and expensive and confusing alteration of such practices of interested parties in those states. All of which may be prevented, as is believed by plaintiffs, by the granting of the injunction in the action at bar pending appeal.

Respectfully submitted, (sgd.) Andrew D. Christian, Charles K. Woltz, 907 East Main Street, Richmond, Virginia. John Lord O'Brian, William I. Morey, 37 Church Street, Buffalo, New York, Attorneys for Plaintiffs.

Christian, Barton & Parker, 907 East Main Street, Richmond, Virginia. Slee, O'Brian, Hellings & Ulsh, 37 Church Street, Buffalo, New York, of Counsel.

[fol. 74] NOTICE

To the Honorable Abram P. Staples, Attorney General of Virginia, and, as Such, Attorney for the Defendants, State Library Building, Richmond, Virginia:

Please take notice, that the undersigned will bring the above motion on for hearing before the court at the Court-

room of the District Court of the United States for the Eastern District of Virginia, in the United States Post Office Building, City of Richmond, State of Virginia, on the 12th day of October, 1939, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

(Sgd.) Andrew D. Christian, Attorney for Plaintiffs.

Due service of the above-mentioned motion is acknowledged this 2nd day of October, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR RE-HEARING—Entered and Filed October 6, 1939

The motion of the plaintiffs for a new trial of the issues raised by the application for an interlocutory injunction, or for a rehearing of said application, for amendment of the opinion filed herein on September 6, 1939, and the findings and conclusions therein, and for the making of additional findings and the statement of additional conclusions, having been read and considered, it is ordered by the District Court of the United States for the Eastern District of Virginia this 6th day of October, 1939:

That said motion be and the same is hereby denied.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

[fol. 76] IN UNITED STATES DISTRICT COURT

Civil Action No. 8

WILLIAM H. OSBORN, et als., Plaintiffs,

v.

THOS. W. OZLIN, et als., etc., et al., etc., Defendants

ORDER DISMISSING BILL—Entered and Filed October 6, 1939

It is ordered, adjudged and decreed this 6th day of October, 1939, by the District Court of the United States for the

Eastern District of Virginia, upon the findings of fact and conclusions of law set out in the opinion heretofore filed:

That the bill of complaint be dismissed.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING INJUNCTION PENDING APPEAL—Entered and Filed October 11, 1939

It is adjudged, ordered, and decreed this 11th day of October, 1939, that the defendants be and hereby are enjoined from in any manner enforcing against the plaintiffs the provisions of Chapter 218 of the Acts of 1938 of the General Assembly of Virginia, until November 6, 1939, and that if by November 6, 1939, an appeal shall have been allowed from the judgment entered on October 6, 1939, then said injunction shall continue in effect during the pendency of the appeal.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

I have seen this.

(Sgd.) Abram P. Staples, Attorney General of Va.

[fol. 78] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed November 3, 1939

To Thos. W. Ozlin, William Meade Fletcher and Lester Hooker, individually, and as the persons constituting the State Corporation Commission of the State of Virginia, and George A. Bowles, individually, and as Commissioner of Insurance of the State of Virginia, Defendants:

You and each of you are hereby notified that the plaintiffs in the above-entitled cause will jointly appeal from the

decree of the United States District Court for the Eastern District of Virginia, entered in said cause the 6th day of October, 1939, to the Supreme Court of the United States as provided by the applicable statutes of the United States and rules of said Supreme Court.

Dated November 3, 1939.

John Lord O'Brian, 37 Church Street, Buffalo, New York; (Sgd.) Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Due service of the foregoing Notice of Appeal is hereby admitted this 3rd day of November, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 79] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed November 3, 1939

To the Honorable Robert N. Pollard, Judge of the District Court of the United States for the Eastern District of Virginia:

Now come the petitioners, William H. Osborn, Channing F. MacNeil, Lewis C. Adair, Accident and Casualty Company of Winterthur Switzerland, American Automobile Insurance Company, Bankers Indemnity Insurance Company, Car and General Insurance Corporation Limited, Central Surety and Insurance Corporation, Continental Casualty Company, Eagle Indemnity Company, Fireman's Fund Indemnity Company, General Accident Fire and Life Assurance Corporation Limited, Glens Falls Indemnity Company, Hartford Accident and Indemnity Company, Indemnity Insurance Company of North America, London & Lancashire Indemnity Company of America, London Guarantee and Accident Company Limited, Maryland Casualty Company, Massachusetts Bonding and Insurance Company, National Casualty Company, New Amsterdam Casualty Company, New York Casualty Company, Phoenix Indemnity Company, Royal Indemnity Company, Seaboard Surety Company, Standard Surety & Casualty Company of New York,

Sun Indemnity Company of New York, The Aetna Casualty and Surety Company, The Century Indemnity Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, United States Casualty Company, United States Guarantee Company, Zurich General Accident and Liability Insurance Company Limited, and respectfully represent that a final decree of the District Court of the United States for the Eastern District of Virginia, (a Specially Constituted District Court organized pursuant to 28 U. S. C. 380), was [fols. 80-100] entered in the above entitled cause on the 6th day of October, 1939, dismissing their Complaint "upon the findings of fact and conclusions of law set out in the opinion heretofore filed".

Petitioners appeal from said decree, upon the grounds and for the reasons stated in the Assignment of Errors presented herewith.

Wherefore, the petitioners, being so aggrieved, respectfully pray that this appeal be allowed; that a proper order touching the security required of them be made; that citation be issued according to law and that a transcript duly certified of the record and proceedings upon which said decree was based be sent by the Clerk of the District Court to the Supreme Court of the United States under the rules of the Supreme Court in such case provided.

(Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, New York; Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Dated November 3, 1939.

[fol. 101] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed November 3, 1939

Now come the plaintiffs and assign as errors in the record and proceedings, and in the findings of fact and conclusions of law made herein, and in the final decree entered thereon October 6, 1939 by the District Court of the United States for the Eastern District of Virginia dismissing the complaint, the following, viz:

I

Complainants assign error to rulings made by the District Court in the conduct of the trial upon evidence and allege that the court erred:

1. In admitting, over plaintiffs' objection, evidence respecting the custom in the fire insurance business of a producing agent splitting the commission with the agent in the locality of the risk, which was offered as bearing on the reasonableness of the statute involved,—upon the ground said custom was immaterial.

2. In admitting in evidence, over plaintiffs' objection, as bearing on the construction and reasonableness of the statute involved, the Resolution adopted February 13, 1939, by the Board of Directors of the Virginia Association of Insurance Agents, Inc., declaring that a resident agent who countersigns a policy produced by a non-resident broker shall consider himself associated with the contract and determine the propriety thereof and throughout the contract shall render the same service to the assured as if he had been the producing agent,—upon the grounds said Resolution was irrelevant, immaterial and incompetent and was a self-serving declaration.

[fol. 102] 3. In admitting, over plaintiffs' objection, the testimony of T. T. Moore, Chief Examiner of the Virginia Insurance Bureau, respecting the defendants' construction and interpretation of the statute involved as imposing upon a resident agent countersigning a contract produced by a non-resident broker the same obligations with respect to supervising the contract and with respect to future services to be rendered the assured and the insurer as such resident agent has in cases where he produces a similar contract, which testimony was offered as bearing on the construction and reasonableness of the statute,—upon the grounds that such testimony was immaterial, self-serving, and not an officially and regularly promulgated ruling of the Virginia Insurance Bureau.

II

Plaintiffs assign error to the findings of fact made by the District Court, grouping said findings for the sake of brevity in one assignment whenever said findings contain a common error; but intending that the assignment of error shall be

considered as applying to each finding of fact separately, and plaintiffs allege that the court erred:

4. In making the finding of fact in paragraph designated 5 (see Footnote),—that in fire insurance it has been the custom for the producer of the business to associate with the contract and to split the commission with an agent who does business in the vicinity of the risk,—in that said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

5. In making the findings of fact in paragraphs designated 5, 6, 12 and 17,—that one of the important services rendered an assured is "servicing the contract" by company "servicing personnel" in the state of exposure and [fol. 103] that the ability of the company to do so affects the placing of the insurance because a producer seldom places the insurance with a company not licensed in the state of exposure,—in that said findings in respect to fidelity, health and accident, excess insurance, and numerous surety, burglary, and plate glass contracts, are not supported by any evidence and are contrary to the uncontroverted evidence, error being assigned separately to the making of each of said findings.

6. In making the finding of fact in paragraph designated 8,—that when a broker, solicitor, or other commission agent is the producer, the branch manager under whose supervision, or within whose territory, the producer is working receives the field supervision cost,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

7. In making the finding of fact in paragraph designated 12,—that it is as important that the insurer be licensed to do business in Virginia when a contract for Virginia coverage is produced in another state, as when it is produced by a resident agent,—in that said finding is not supported by substantial evidence.

Footnote: For convenience in reference to findings of fact and conclusions of law, the paragraphs of the opinion containing findings of fact and conclusions of law have been marked (1), (2), etc., upon the margin of the court's opinion appended to the Statement as to Jurisdiction.

8. In making the finding of fact in paragraph designated 12,—that the assured most needs the benefit of company services in the state of exposure,—in that said finding is not supported by substantial evidence.

9. In making the finding of fact in paragraph designated 16,—that the controlling reason for out of state production of master policies covering, among others, risks in Virginia, is that a lower rate is obtained for Virginia risks and that such lower rate for Virginia risks is accomplished by the contracts being produced outside of Virginia and by some form of special rating,—in that said finding is not supported by any evidence.

10. In making the finding of fact in paragraph designated 16,—that the broker or producer frequently contributes to the reduction of the premium on a master policy by reducing the customary commission,—in that the only evidence [fol. 104] of such reductions is in connection with risks which are "equity" rated and the company has imposed upon the broker or producer, as a part of the rating process, a reduction of commission, and in that respect said finding is not supported by any evidence.

11. In making the finding of fact in paragraph designated 19,—that Virginia agents do not have the opportunity to acquire the information and experience that will render them expert in the rating and underwriting of multiple risks and that a statutory requirement compelling the association of a resident agent with all Virginia risks will tend to overcome the handicap of the Virginia agent,—in that said finding is not supported by substantial evidence.

12. In making the finding of fact in paragraph designated 20,—that under present out of state production technique small Virginia companies cannot offer reduced premiums on interstate contracts with Virginia coverage included,—in that said finding is not supported by substantial evidence.

13. In making the findings of fact in paragraphs designated 22 and 23,—that out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of Virginia, particularly those dealing with insurance rates, rebates and special favors, and virtually nullifies Virginia's statutes dealing with such matters, and that

in the absence of someone in Virginia connected with the production process, it is difficult for Virginia to prevent violations of such statutes,—in that said findings are not supported by substantial evidence, error being assigned separately to each of said findings.

14. In making the finding of fact in paragraph designated 24 respecting the experience of Virginia under prior statutes that in 1921 the State Insurance Commissioner interpreted the prior statutes as requiring all insurance on persons or property in Virginia to be covered by a separate policy from risks located in any other state, and as requiring the policy to be issued through and signed by a resident agent, in that said interpretation was modified before the effective date of the statute here involved by rulings, still [fol. 105] in effect, which permit the issue of one policy covering workmen's compensation or fire risks located both within and without the state subject to certain requirements in said rulings provided, and in that respect said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

15. In making the findings of fact in paragraphs designated 25, 28, and 35,—that, prior to the enactment of the statute involved, general agents, branch office managers and salaried agents have countersigned without compensation contracts produced outside Virginia and covering risks therein,—in that said findings are not supported by any evidence, error being assigned separately to each of said findings.

16. In making the finding of fact in paragraph designated 26,—that the statute involved will not affect the production of insurance contracts covering a single or small number of risks,—in that resident agents producing contracts in Virginia have frequently, when it has been important to the interest of the assured, the company, or the producer so to do, secured the countersignature of such contracts by salaried agents who are now forbidden to do so by the statute, and in that respect said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

17. In making the finding of fact in paragraph designated 26,—

"The Act • • • will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent."

In that (a) if the assured buys from a non-resident broker who places the insurance with a mutual company or with a stock company not licensed to do business in Virginia, the production of master policies outside the state will not be affected, nor will the assured pay a commission both to the broker and the resident agent, nor will he lose the advantage [fol. 106] of his buying power; and (b) if the assured buys such a policy in any company from a Virginia agent, the assured will not lose the advantage of his buying power nor will the cost of the insurance on his Virginia risks be increased; and in these respects said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

18. In making the finding of fact in paragraph designated 28,—that under the statute the countersignature by a resident agent of a policy produced outside the state will not be a perfunctory act unaccompanied by any service to the assured,—in that said finding is not supported by substantial evidence.

19. In making the findings of fact in paragraphs designated 29 and 34,—that if the Virginia agent is paid one-half the commission on a master contract covering risks in several states, he will doubtless be called upon and able to render service of substantial value and be able to render assistance in checking the coverage and premium, servicing the contract, adjusting claims, and acting as the mediator between the assured and insurer in the coverage locality,—in that said findings are not supported by substantial evidence and are contrary to the clear weight of the evidence, error being assigned separately to the making of each of said findings.

20. In making the finding of fact in paragraph designated 31,—that the contracts of the plaintiff companies on persons or property within Virginia call for or contemplate the performance of certain acts within the state,—in that said finding is not supported by substantial evidence.

21. In making the finding of fact in paragraph designated 32,—that it is not the only purpose or probable effect of the statute to increase the income of the resident agents but that the important object of the statute is to require that all policies shall be placed by a resident agent who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract and that the requirement that he must retain one-half of the commission will probably lead to greater participation of the resident [fol. 107] agent and tend to create a more efficient agency force with the result that the local interests of the insured will be better served,—in that said finding is not supported by substantial evidence.

22. In making the findings of fact in paragraphs designated 33 and 35,—that the statute will crease greater responsibility on the part of the resident agents whose cooperation in the enforcement of the insurance statutes is desired and will assist the state in putting into effect statutes passed for the regulation of the insurance business, and that it will not be so easy for the foreign insurance companies, the nonresident brokers, and the assureds to evade the prohibitions against rate cutting and rebating,—in that said findings are not supported by substantial evidence, error being assigned separately to each of said findings.

23. In making the finding of fact in paragraph designated 33,—in substance to the effect that the prohibitions against rate cutting and rebating of commissions were designed to protect the insured resident in Virginia and the local insurance companies against the great advantages enjoyed by business of national scope,—in that said finding is not supported by substantial evidence.

24. In making the finding of fact in paragraph designated 33,—that the statute will cause the resident agent to acquire information as to illegal practices which may be made available to the state,—in that a licensed resident salaried agent countersigning master policies produced outside the state

would, in the absence of the statute, acquire all information that a resident agent will acquire under the statute and the same information is now made available by such a licensed salaried agent as will be made available under the statute by the resident agent, and neither of them with or without the statute will acquire information except as to the Virginia risks covered by a master contract, and in those respects the finding is not supported by any evidence.

25. In making the finding of fact in paragraph designated 34,—that it has been customary for fire policies to be signed [fol. 108] by a resident agent, and that he has been paid one-half the commission even though he has not negotiated the policy,—in that said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

26. In making the finding of fact in paragraph designated 35,—that the statutory provision requiring the signature of a commission agent, rather than a salaried agent, to be affixed to the policy, is imposed as a safeguard to make certain that the commission agent shall have knowledge of the issuance of the policies, and of his right to share in the subsequent activities thereunder,—in that said finding is not supported by substantial evidence.

27. In making the finding of fact in paragraph designated 35,—that the salaried agent has no real complaint that the statute discriminates against him,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

28. In making the finding of fact in paragraph designated 38,—that the evidence shows that mutual companies, with immaterial exceptions, do not have commission agents,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

29. In making the finding of fact in paragraph designated 38,—that it is the boast of stock companies that the salaried agent of the mutual company is not able to afford as valuable a service to the insuring public as the commission agent of the stock company,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

III.

Plaintiffs assign error in so far as the District Court, by its order made and filed October 6, 1939, denied plaintiffs' motion for the additional findings of fact set forth in Schedule B of plaintiffs' motion for a new trial of the issues raised [fol. 109] by the application for an interlocutory injunction or for rehearing of said application, for the amendment of the opinion filed September 6, 1939, and findings and conclusions therein, and for additional findings and conclusions, and plaintiffs allege that the court erred:

30. In refusing to make plaintiffs' requested additional findings of fact numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in such Schedule B, all of which were stipulated to be facts, or alleged in the complaint and not denied in the answer, or alleged in the answer, or proven by uncontroverted evidence, error being assigned separately to the refusal to make each of said requested findings.

IV.

Plaintiffs assign error to the conclusions of law made by the District Court, grouping said conclusions for the sake of brevity in one assignment whenever said conclusions contain a common error; but intending that the assignment shall be considered as applying to each conclusion of law separately, and plaintiffs allege that the court erred:

31. In making its conclusions of law in paragraphs designated 31 and 39,—that Virginia has power to regulate contracts produced outside Virginia covering persons or property within Virginia and that such contracts are not beyond the jurisdiction of the State,—in that said conclusions are contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

32. In making its conclusion of law in paragraph designated 31,—that the question is whether the statutory requirement that the insurance contract be made through a resident agent, who shall be paid at least one-half the commissions, has a reasonable relation to the risk covered by the contract and to the performance within Virginia of the obligations undertaken by the insurer,—in that such conclusion is an erroneous statement of law.

[fol. 110] 33. In making its conclusion of law in paragraph designated 33,—that the burden is on plaintiffs to show that the statute is "devoid of legitimate purpose",—in that such conclusion is an erroneous statement of law.

34. In making its conclusions of law in paragraphs designated 34 and 39, to the effect that the provisions of the statute are not arbitrary and unreasonable, in that said provisions are discriminatory and an unreasonable exercise of the police and legislative powers of Virginia, and without due process of law deprive the assured, the insurer, the resident salaried agent and the non-resident broker of their liberty and property and freedom of contract, and deny them the equal protection of the laws by disqualifying the resident salaried agent as a countersigner and by requiring payment to a Virginia resident agent of an arbitrary commission which bears no relation to the value of his services to the assured, the insurer or the non-resident broker, all in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

35. In making its conclusion of law in paragraph designated 34,—that the statute is not arbitrary and unreasonable because it is customary in the fire insurance business for a resident agent to countersign a policy produced by a non-resident broker and be paid one-half the commission,—in that the evidence shows that the business practices and customs and rights, duties and obligations of agents in the fire insurance business differ materially in many respects from those in the field of casualty and surety business.

36. In making its conclusion of law in paragraph designated 39,—that the provisions of the statute involved are not in violation of the Federal Constitution and that the prayers for interlocutory and permanent injunctions should be denied and the complaint dismissed,—in that under the facts established by the evidence, subsection (a) of Section 4222 and Section 4226-a of Chapter 218 of the Acts of the General Assembly of Virginia of 1938 are in violation of [fol. 111] Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

V.

Plaintiffs assign error to the making and filing of the final decree by the District Court on October 6, 1939, in that the evidence as a whole failed to support the findings of fact made and entered, the conclusions of law drawn therefrom, and the decree based thereon.

Wherefore, plaintiffs pray that the final decree made and filed October 6, 1939, be reversed and a decree be made declaring that subsection (a) of Section 4222 and Section 4226-a of Chapter 218 of the Acts of the General Assembly of Virginia of 1938 are void and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and granting a permanent injunction restraining the defendants from enforcing such provisions of that statute and for such other or further relief as to the court may seem just and proper.

Respectfully submitted, (Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, New York; Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Dated November 3, 1939.

[fol. 112] In United States District Court

[Title omitted]

Order Allowing Appeal and Fixing Amount of Appeal Bond—Entered and Filed November 3, 1939

The plaintiffs, and each of them, in the above entitled cause, having presented their petition for the allowance of an appeal to the Supreme Court of the United States from the final decree made and entered herein by the District Court of the United States for the Eastern District of Virginia, (a Specially Constituted District Court organized pursuant to 28 U. S. C. 380), on the 6th day of October, 1939, accompanied by an assignment of errors and a statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided.

It is this 3" day of November, 1939, Ordered:

1. That an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Eastern District of Virginia, in this cause as provided by law;

2. That the Clerk of said District Court shall prepare and certify a transcript of the record and proceedings in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days of this date;

3. That security for costs on appeal is fixed in the sum of $1,000, said bond to be executed by one or more of said appellants.

(Signed) Robert N. Pollard, United States District Judge.

[fols. 113-114] Citation, in usual form, showing service on Abram P. Staples, Nov. 3, 1939, omitted in printing.

[fols. 115-116] Bond on appeal for $1,000.00 approved and filed Nov. 3, 1939, omitted in printing.

[fol. 117] IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed January 18, 1939

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys; that the facts hereinafter set forth shall be taken as true, as though established by competent evidence taken in open court, provided, however, that this stipulation shall be without prejudice to the right of any party to introduce other and further material evidence not inconsistent with the facts herein stipulated to be taken as true, and further provided, however, that any party may object to the consideration by the court of any facts herein, as irrelevant or immaterial. The facts stipulated are as follows, viz:

1

Each company plaintiff in this action is a foreign or alien stock corporation, was created under the laws of the government indicated below, was admitted to the State of Virginia

and thereby became qualified to do business therein at or before the date as indicated below, and has subsequently been and now is licensed to conduct therein the casualty insurance or surety business, or both.

Company Plaintiff	Government of Creation	Date at or before which Admitted
Accident and Casualty Company of Winterthue, Switzerland [fol. 118]	Confederation of Switzerland	May 18, 1938
American Automobile Insurance	Missouri	June 29, 1921
Bankers Indemnity Insurance Company	New Jersey	November 19, 1929
Car and General Insurance Corporation, Limited	United Kingdom of Great Britain and Northern Ireland	May 1, 1928
Central Surety and Insurance Corporation	Missouri	February 8, 1927
Continental Casualty Company	Indiana	February 9, 1904
Eagle Indemnity Company	New York	August 12, 1922
Fireman's Fund Indemnity Company	California	March 17, 1931
General Accident Fire and Life Assurance Corporation, Limited	United Kingdom of Great Britain and Northern Ireland	August 21, 1908
Glens Falls Indemnity Company	New York	September 25, 1929
Hartford Accident and Indemnity Company	Connecticut	January 12, 1914
Indemnity Insurance Company of North America	Pennsylvania	January 15, 1921
London & Lancashire Indemnity Company of America	New York	July 17, 1929
London Guarantee and Accident Company, Limited	United Kingdom of Great Britain and Northern Ireland	August 20, 1907
Maryland Casualty Company	Maryland	March 12, 1904
Massachusetts Bonding and Insurance Company	Massachusetts	June 17, 1921
National Casualty Company	Michigan	January 31, 1921
New Amsterdam Casualty Company	New York	February 12, 1914
New York Casualty Company	New York	January 16, 1904
Phoenix Indemnity Company	New York	July 18, 1923
Royal Indemnity Company	New York	May 11, 1911
Seaboard Surety Company	New York	January 21, 1937
Standard Surety & Casualty Company of New York	New York	May 31, 1929
Sun Indemnity Company of New York	New York	February 24, 1925
The Aetna Casualty and Surety Company [fol. 119]	Connecticut	February 28, 1911
The Century Indemnity Company	Connecticut	March 10, 1927
The Fidelity and Casualty Company of New York	New York	February 4, 1904
The Hartford Steam Boiler Inspection and Insurance Company	Connecticut	February 12, 1904
The Standard Accident Insurance Company	Michigan	January 15, 1904
The Travelers Indemnity Company	Connecticut	June 5, 1915
The Travelers Insurance Company	Connecticut	February 11, 1904

Company Plaintiff	Government of Creation	Date at or before which Admitted
United States Casualty Company	New York	January 18, 1904
United States Guarantee Company	New York	June 10, 1929
Zurich General Accident and Liability Insurance Company, Limited	Confederation of Switzerland	September 1, 1921

2

The word "company" sometimes is used herein to refer either to a casualty insurer or a surety; the word "assured" to refer either to an insured, principal obligor, or obligee; the word "contract" to refer either to a casualty insurance contract or surety bond; other words and phrases are used with the same meanings as they are used in the complaint in this action.

3

In many instances a prospective assured is not particularly interested in the identity of the company with which his contract is to be made. Most contracts result from solicitation of the prospective assured by a person authorized by a company to act, and licensed to act, as an agent of the company, or by a person licensed as an insurance broker; or else as the result of relationship existing between the prospective assured, and such an agent or broker, such as that when the former is inferested in making a contract, he [fol. 120] consults with or instructs the latter as to the procurement of the same. In order for persons to be so licensed, they are required to be trustworthy and to have sufficient knowledge of their business to conduct the same intelligently.

4

An agent solicits and negotiates contracts directly with prospective assureds, or with brokers acting for prospective assureds. A broker makes proposals for contracts in behalf of prospective assureds to agents of companies. Successful agents so far consider the interests of assureds as to possess their confidence and goodwill and successful brokers so far consider the interests of the companies as to possess their confidence and goodwill. For otherwise an agent cannot negotiate a satisfactory number of contracts, nor a broker negotiate desired contracts with a satisfactory minimum of trouble and delay. Accordingly successful agents, just as if they were brokers, ordinarily furnish to prospec-

tive assureds the least costly available contracts providing the needed coverages, confer with and advise those to whom they sell contracts as to their insurance and surety problems and assist them in securing desired cancellations or modifications of contracts and in complying with contract provisions with which compliance is necessary in order to secure performance by the companies of their contract obligations. And successful brokers, just as if they were agents, ordinarily propose to the companies the making of contracts not involving the probability of losses in excess of those provided for by the proposed premium rates, and without compensation therefor other than the commissions hereafter referred to, see to the communication to the companies of the facts material to proposed risks, changes occurring therein after the making of contracts and misrepre- [fol. 121] sentations, which render advisable and proper the cancellations or modifications of contracts.

In Virginia since June 21, 1938, there is no provision of law for the licensing of residents as brokers. In most states containing large metropolitan centers, however, as was the case in Virginia until June 21, 1938, resident persons may be licensed as brokers, without being either authorized by companies or licensed by the state as agents, and are required to be so licensed (if not licensed as agents) if they solicit insurance therein for compensation either on account of assureds, or companies. In most states non-residents may be licensed as brokers.

The value to a particular company of the services of a particular broker, is measured exclusively by the risks placed with it and premiums thereon.

Agents who are compensated by commissions usually act for more than one company, as life, fire, marine, casualty, insurance, and surety companies, and ordinarily have no executive or supervisory duties, except that some assist brokers and assist and supervise other agents. Frequently their companies do not make all types of contracts, and where the law permits it, they act as brokers in placing with agents of other companies contracts of a type not made by their companies; and such agents frequently place with agents of other companies particular contracts even of types made by their own companies, which contracts for any reason they do not desire to make.

Brokers, and also agents who do not have the duty to assist and supervise other agents, are commonly called "pro-

ducers''; the various risks assumed in different types of contracts are commonly referred to as different "lines" of the casualty insurance or surety business.

Casualty insurance and surety companies frequently have agents known as general agents who provide and operate [fol. 122] offices for themselves and a number of producers, and while they themselves produce, they also supervise the activities of and assist the other producers working out of those offices, as well as producers who have separate offices. These general agents, like the producers, usually represent more than one company and at times act as brokers.

A Producer or general agent (not a branch manager) is compensated by commissions consisting of parts of the premiums paid on the contracts he procures.

The percentage of a premium which is customarily payable as commission varies among the various lines. The producer's commission in connection with a workmen's compensation insurance contract is ordinarily 10% of the premium, while in most other lines it is from 15% to 20%.

In addition to the ordinary producer's commissions out of the premiums, a general agent receives an overriding commission for his assisting and supervisory services based on the premiums on contracts produced by the producers working with his assistance and under his direction, and when he himself alone produces the contracts, he receives both commissions. The ratio of the amount of the general agent's commission to the amount of the producer's commission varies among the lines. But the amount of the overriding commission of the general agent is always considerably less than the amount of the producer's commission, usually being one-third or one-half thereof.

Some companies (or groups of commonly owned and managed companies) provide for certain of their agency offices to be offices of their own; and provide for the supervision and assistance of producers by agents working only for the single company providing the office. In those instances, the [fol. 123] agency offices are called branch offices, and the agents in charge of the same are called branch managers. The branch offices are maintained by and in the name of the company. As there are no overriding general agents' commissions to be paid upon the business placed by brokers with, or produced by commission agents working out of, a branch office, the amounts which would otherwise be paid to

a general agent as overriding commissions on such business are retained by the company for application to the expense of the maintenance of the branch office, including the salary of the branch manager, and other company purposes. When the branch manager of a company himself produces a contract independently of any other agent or a broker, the company might retain the amount of the producer's commission (and pay no commission), but few, if any, of the company plaintiffs have branch managers who are permitted to produce without credit being given to another agent or a broker for participation in the production.

5

The 1938 Act mentioned in the complaint is neither a minimum nor maximum wage law. Many persons registered as resident agents for casualty insurance companies and surety companies under the laws of the State of Virginia give only a part of their working time to their services as such, and receive compensation for their services other than as insurance agents, in addition to their compensation received for their services as insurance agents.

6

On September 6, 1938, the attorney for the plaintiffs wrote a letter as follows:

Hon. George A. Bowles, Commissioner of Insurance, State Office Building, Richmond, Virginia.

[fol. 124] DEAR SIR:

In the course of the various conferences as to Sections 4222, 4221-a, 4226, 4226-a, and 4235 of the Code as they now exist I understand that certain constructions have been placed by the Commission and yourself on various parts of these laws, and that the laws are being enforced, or attempted to be enforced, according to the same. To make certain that my understanding is correct I am stating these constructions below and will appreciate your confirming the correctness of my understanding.

1. That the words "contracts of insurance or surety on persons or property" in the State of Virginia not only refer to such a contract when some of the steps (other than countersignature) taken by the parties in the making of the contract take place in Virginia, but refer to such a con-

tract notwithstanding that all of said steps take place outside of Virginia.

2. That a salaried employee of a company may not secure registration under Section 4235 except as a "company representative", under no conditions being permitted to secure registration as an agent, or resident agent.

3. That "usual and customary commissions" in Section 4226-a means all the commissions payable for the production of the business.

4. That "exchange of business" in Section 4226-a covers a case where a non-resident producer sends a contract for countersignature alone, to a Virginia agent who countersigns the contract and sends it back.

5. That under Section 4226-a, a non-resident producer of a contract covering in Virginia must have a Virginia broker's license in order to transact such business, even though none of his solicitation or other activity, takes place within the State of Virginia.

Yours respectfully, —— ——.

On September 9, 1938, said letter was replied to by a letter as follows:

COMMONWEALTH OF VIRGINIA,

(Seal of State)

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

Geo. A. Bowles, Commissioner of Insurance.
C. B. Coulbourn, Actuary.
T. T. Moore, Chief Examiner.
Geo. A. Peery, Statistician.
James M. Hayes, Jr., Director of Fire Marshals.
Zelle G. Knight, License Clerk.
Courtney W. Harris, Fire Rate Clerk.

RICHMOND, September 9, 1938.

[fol. 125] Christian, Barton & Parker, Mutual Building, Richmond, Virginia.

GENTLEMEN:

We have received your letter of September 7th in regard to certain sections of the Insurance Laws dealing with

agents of insurance companies. We are giving below the construction of this department on the questions raised in your letter:

1. The words "contracts of insurance or surety on persons or property" refer to all contracts of insurance covering such persons or property in this State regardless of whether or not all steps in connection with the issuance of the policy, other than countersignature, take place outside of the State of Virginia.

2. A salaried employee of a company may not secure a certificate of registration except as a company representative.

3. The "usual and customary commissions" referred to in Section 4226-a does not necessarily mean the entire commission paid but refers to the usual and customary commission received by the so-called writing or producing agent.

4. The expression "exchange of business" in Section 4226-a covers a case where a non-resident producer sends a contract for countersignature to a Virginia agent who countersigns the contract and returns it. Of course, this expression also refers in the same section to the exchange of business between resident agents.

5. In our opinion, Section 4226-a requires a non-resident producer of a contract covering in Virginia to have a Virginia broker's license even though none of his solicitation or other activity takes place within this State.

Very truly yours, (Signed) Geo. A. Bowles, M.,
Commissioner of Insurance.

TTM:J.

The defendants and their predecessors in office have for a long period of years construed the laws now incorporated in the Code of Virginia as Sections 4222 and 4226 to apply to all contracts described therein regardless of whether or not all steps in connection with the making of the same, other than countersignature, take place outside of the State of Virginia.

7

Contracts are ordinarily made on forms printed by the company which bear lithographed signatures of its officers

which forms are made into complete contracts by the insertion of the necessary words and figures in blank spaces [fol. 126] provided therein, by the attachment of riders, and by the countersigning of the contracts by an agent authorized so to do by the company, and by the applicable laws.

8

Each natural person who is a plaintiff is the Manager of the Richmond Branch Office of one or more company plaintiffs in this action, viz: Osborn of The Aetna Casualty and Surety Company, MacNeil of The Travelers Indemnity Company and The Travelers Insurance Company, and Adair of The Fidelity and Casualty Company of New York. They have held their present positions as follows: Osborn for more than two years last past and each of MacNeil and Adair for more than ten years last past. Each natural person who is a plaintiff was continuously employed previous to his present employment for an additional period of years by the same company or companies.

Each natural person who is a plaintiff was born or has been naturalized in the United States, is subject to the jurisdiction thereof and of the State of Virginia, and is a resident of said state. The natural persons who are plaintiffs were registered and held certificates of registration under Section 4235 of the Virginia Code as agents of their respective companies, for nearly two years up to July 15, 1938, as to Osborn, and for more than ten years as to MacNeil and Adair. Osborn and MacNeil now have, and for more than two years and ten years, respectively have had their only principal places of business in Virginia; Adair now has, and for several years last past has had, two principal places of business, one in Atlanta, Georgia, and one in Richmond, Virginia. The natural persons who are plaintiffs while holding their present positions have been, and are now, authorized to solicit contracts for their companies in the State of Virginia, and it has been, and is now, a part of their duty so to do, and throughout said period the natural persons who are plaintiffs have intended to act, [fol. 127] and have acted, and at the present time they intend to act and are acting, in good faith as insurance agents. The Virginia Statutes do not prohibit their so acting in the future except that under said Statutes their countersignatures on contracts will not dispense with the necessity

for countersignatures thereof by "registered resident agents".

Except for the classification of agents as provided in Section 4221-a of the Code of Virginia and the provisions contained in the first sentence of Section 4235 of said Code, and the fact that the defendants have construed said statutes as prohibiting the same, the name of each natural person who is a plaintiff would have been filed by his company or companies on or before July 1, 1938, with the State Corporation Commission as a resident agent, and he would have procured a certificate of registration as a resident agent. But solely because said provisions were construed by the defendants to prohibit branch managers from being licensed as resident agents, and to permit such branch managers to be licensed only as company representatives, the natural persons who are plaintiffs were not permitted to procure certificates of registration as resident agents, and the names of the natural persons who are plaintiffs were filed as company representatives, and each procured a certificate of registration as such, effective July 15, 1938, which he now holds.

9

Up to June 21, 1938, or a later date, the natural persons who are plaintiffs have countersigned for their respective companies, large numbers of contracts covering in Virginia, some of which were produced outside of Virginia, and some in Virginia. No special compensation has been charged or made for any of said countersigning services, but the same have been rendered in the performance of the duties of each natural person who is a plaintiff for which performance he has been compensated by salary payments. [fol. 128] The said countersignatures have been fu nished by the said Osborn at the rate of about 125 per month, and by the said MacNeil at the rate of about 56 (his countersignatures in the main being limited to contracts produced outside of Virginia) per month, and by the said Adair at the rate of about 100 per month.

10

Where contracts of the company plaintiffs are now being and in the past have been made, and cover in Virginia, but are or were produced outside of Virginia, the contracts after being countersigned as required by Virginia law, are being

and have been delivered by agents in the states of production who are residents of such states. In said transactions no company plaintiff, up to June 21, 1938, has required or permitted agents furnishing Virginia countersignatures to collect or see to the collection of the full premiums on said contracts, or to receive the usual and customary commissions thereon. The defendants have not had knowledge until the present time of the fact of the company plaintiffs not requiring or permitting said agents to receive said commissions.

11

When contracts covering in Virginia have been produced outside of Virginia by non-resident brokers or agents, they have usually been sent for countersignature by general agents or branch offices or home offices of the companies in other states to general agents or branch offices in Virginia, and similar contracts covering outside of Virginia, but produced in Virginia by residents of Virginia, are usually sent for countersignature by general agents or branch offices in Virginia directly, or through the home offices of the companies in other states, to general agents or branch offices in other states, and the amounts, if any, formerly paid for countersignatures have usually been deducted from the amount of commissions allowed or paid [fol. 129] by the company to the agents at whose requests the countersignatures were furnished.

The laws of some states, including North Carolina, or regulations promulgated under said laws, require their agents who countersign contracts covering therein but produced in Virginia, to receive therefor the usual and customary commissions for the production of said contracts, and to retain at least 50% thereof; Virginia agents are accustomed to receive not more than 50% of the usual and customary commissions on said contracts covering in said states, the laws of which make said requirement, but produced by them in Virginia. The plaintiffs deny the validity of all such laws. The laws of a majority of the states do not make said requirement.

Numerous ones of the company plaintiffs, including those by which the natural persons who are plaintiffs are employed, have large, valuable, and expensive field forces and plants in Virginia, which cannot be removed therefrom without destruction thereof, and have had such for many

years, but the defendants deny that the Virginia statutes constitute any reasonable cause for such removal. The company plaintiffs make numerous contracts covering in Virginia but produced outside of Virginia. As to most of them the amounts of premiums thereon represent from 10% to 20% of their total premiums for Virginia coverage.

Contracts covering in Virginia, but produced outside of Virginia by non-resident brokers or agents, usually come to be so produced because the assureds with which said contracts are negotiated own property in Virginia, or have legal relationships to persons in Virginia, but have principal business offices outside of Virginia. Occasionally the property ownership or legal relationship is temporary, or intermittent. Such assured is usually a foreign corporation or a non-resident person having affairs in Virginia, though occasionally not "doing business" in Virginia. Frequently there are numerous states, other than the state of its principal business office, where such an assured has such affairs.

[fol. 130]

12

Many non-resident brokers or agents producing contracts covering in Virginia and produced outside of Virginia procure licenses by the State of Virginia as non-resident brokers, but some of them do not. Many of those who do so are persons who do not come inside of the State of Virginia to solicit, or to do other acts in connection with the making of said contracts, but have procured and paid for said licenses solely in order to qualify themselves under the Virginia laws as persons at whose requests Virginia countersignatures may be furnished, and to whom Virginia countersigners may pay or allow parts of commissions. Said licenses, however, confer upon the licensees the privileges of coming into Virginia and soliciting and transacting such business within the state. The company plaintiffs are frequently not able to require non-resident brokers or agents to secure non-resident brokers' licenses in Virginia.

13

Each of the company plaintiffs named in the table in paragraph (7) of the complaint made contracts in 1937 and in the first half of 1938, which covered in Virginia but were produced outside of Virginia, on some of which contracts the aggregate premiums for the Virginia coverage, the approximate amounts of commissions paid to the non-resident

brokers or agents who produced said contracts, and the amounts paid for the Virginia countersignatures of said contracts were as shown in the said table. The figures result from ordinary operations in ordinary periods and the said company plaintiffs are all doing business now, as formerly, and expect to continue so to do.

14

The resident broker as distinguished from the agent, is virtually non-existent in localities other than the larger [fol. 131] cities of the United States, but he is a considerable factor in production in the largest cities. The most successful producers possess the good will and confidence of assureds with large contract needs and tend to become relatively independent of the companies. In the largest cities the premiums and commissions on contracts of many individual assureds tend to be very large, because of the large aggregation in such cities of management duties and powers over capital and business employed and conducted not only in such cities but in other cities, states, sections, and countries. In the largest cities the acquirement and possession of the good will and confidence of individual assureds and the resulting ability to control the placing of their contracts tend to become more important to some producers than the representation of a company or of several companies. The contracts of many individual assureds in the largest cities involve large amounts of premiums and resulting commissions. A producer who controls the placing of the contracts of even a few of them looks chiefly to the commissions thereon for his earnings.

15

In the largest cities there are insurance centers and communities as the locality of and between John Street and Maiden Lane in New York City, with insurance luncheon clubs, and numerous other insurance organizations. Most of the brokers, general agents, branch managers, responsible company officers and employees are in frequent personal contact and short walking distance of each other.

Dated at Richmond, Virginia, this 12th day of January, 1939.

(Signed) Andrew D. Christian, Attorney for the Plaintiff. Abram P. Staples, Attorney for the Defendants.

[fol. 132] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FILING STIPULATION OF FACTS—Entered and Filed January 18, 1939

This day came the parties by counsel and presented a written stipulation of facts dated January 12, 1939, and prayed leave to file the same, and the said stipulation of facts is accordingly filed.

January 18, 1939.

(Signed) Robt. N. Pollard, United States District Judge.

[fol. 133] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER MAKING STATEMENT OF EVIDENCE FILED DECEMBER 1ST, 1939, A PART OF THE RECORD ON APPEAL—Entered and Filed December 7, 1939

It is hereby ordered this 7th day of December, 1939, that the Statement of Evidence and Exhibits designated by Appellants for inclusion in transcript, which was filed December 1st, 1939, shall constitute the evidence and the record of the objections thereto to be included by the Clerk in the transcript of the Record on Appeal to the Supreme Court of the United States.

(Sgd.) Robt. N. Pollard, United States District Judge.

We agree to the above order.

(Sgd.) A. D. Christian, Attorney for the Appellants.
Abram P. Staples, Attorney General of Virginia, and as such, Attorney for the Appellees.

[fol. 134] IN UNITED STATES DISTRICT COURT

Appellants' Statement of Evidence and Exhibits

Filed December 1, 1939

[fol. 135] Now comes the appellants in the above entitled cause and present to the Court a statement of all the evi-

dence necessary for a decision of the questions presented by the appeal herein. Pursuant to the direction of the Specially Constituted District Court, such evidence was taken by deposition.

APPEARANCES

The following appearances were entered before the Specially Constituted District Court: Andrew D. Christian, Esq., attorney for the plaintiffs, and Honorable Abram P. Staples, Attorney General of the Commonwealth of Virginia, as attorney for the defendants.

ROBERT H. NICHOLLS, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. I believe you are at present Assistant Resident Manager of the New York Office of the Casualty Department of The Fidelity & Casualty Company of New York?

A. That is right.

Q. How long have you been connected with the casualty insurance business?

A. 20 years.

Q. What were your duties in this position?

A. The underwriting and production of casualty business.

[fol. 136] Q. Is that all under your direction at that office?

A. Well, I am under the direction of the branch manager. He is my superior.

Q. And you handle this division of the business under him?

A. That is correct.

Q. Please say how brokers are ordinarily compensated.

A. Brokers are compensated by the commissions earned on premiums paid to the companies.

Q. Are there exceptions to that method of their compensation?

A. No.

Q. How do they get their compensation when they place risks of self insureds in the State Fund?

A. When they handle the self insured risk, the broker charges a service fee to the particular risk. If they place

it in the State Fund they also charge a service fee of approximately 10 per cent of the premium that would be payable to a stock company. If they place it in a mutual, they usually charge a percentage of the dividend bearing on the services that they render, or they may place it with a mutual company that pays a straight commission.

Q. Are these cases, where the broker is compensated by something other than a straight commission on premiums, rare cases in a broker's life or are they frequent occurrences?

A. I would say they are infrequent.

Q. Does a broker ordinarily have an agreement under which he represents a company, an insurance company?

A. No.

[fol. 137] Q. Are agents ordinarily compensated other than by the commissions paid on the premiums on the contracts they produce, or by the salaries they receive from their companies for their services in conferring with assureds or brokers and assisting them in making claims or other transactions?

A. No.

Q. Is it only agents who are paid by commissions who confer with assureds and brokers and advise them, and who assist them in giving notices and making and collecting claims, or do branch managers also do those things?

A. Branch managers also perform those duties.

Q. Having reference to the amounts of the producers' commissions paid as shown by the complaint and affidavits in this action, please say whether the general body of the assureds and insurers and producers seem satisfied with them and consider them reasonable, or whether they are considered unreasonable?

A. I would say they are considered reasonable.

Q. And is there a practice under which a different rate of producers' commission is payable when the coverage is in a state other than the state of production from what rate of producers' commission would be paid if the coverage were in the state of production?

A. No, not to my knowledge.

Q. What are the differences, if any, between a branch office and a general agent's office?

A. The branch office does not do any direct solicitation of [fol. 138] business; all of its business comes in through brokers or agents; and for the purpose of simplifying that,

I will mention brokers and agents in the same category as producers, whereas a general agent may also solicit and develop his own direct business in addition to the business he may take in from direct producers such as local agents and brokers.

Q. Going back to the offices themselves instead of the persons in charge of the offices, who pays the expense of maintaining the branch offices?

A. The company.

Q. Who pays the expense of maintaining the general agent's office, the general agent or the company?

A. The general agent.

Q. In whose name is the branch office conducted, that of the company or that of the branch manager?

A. In the name of the company.

Q. In whose name is the office of the general agent conducted?

A. Conducted in his own name.

Q. Now I want you to discuss the differences, if any, between the functions and duties and responsibilities of a branch manager and those of the general agent. I believe it is also true, is it not, that the general agent is always compensated by commissions, while a branch manager is always compensated by salary?

A. That is true.

Q. Leaving out those differences, are there other differences in their functions, duties and responsibilities, and [fol. 139] relationships to the company and to the assured persons, or are they alike in respect of these other matters?

A. I would say they are alike in respect of the other matters.

Q. As a branch manager are you concerned only with the production of a satisfactory volume of premiums in the various lines in which you produce, or are you also responsible for a selection of risks in such a manner as to yield a profit to the company?

A. Naturally, I would be interested primarily in developing a profit to my company, and secondarily in developing a volume of business. I can elaborate on that by saying that if I had a large volume of business that was unprofitable, I would not be considered a satisfactory branch manager to a company.

Q. Per contra, if the little business you wrote was extremely profitable but you wrote a quantity or volume of

it considered inadequate, would you also be considered unsatisfactory to the company as a branch manager?

A. I might be, yes.

Q. Does a branch manager have power to accept and reject risks and to classify those as to the amount of premiums which they should bear?

A. Yes.

Q. Does he have a duty to do this in such a manner as the business will show a profit contemplated by the premium which is fixed?

A. Yes, he does.

[fol. 140] Q. Does he have discretion in discharging that duty perhaps to take some risks of the particular producers that might not be profitable, for the sake of getting at the same time other risks that would be excessively profitable and make an average that would be satisfactory?

A. That is correct. He may, for instance, write an unprofitable part of a risk in order to obtain other forms of coverage from that assured that are profitable, so that the whole risk in itself would be considered valuable.

Q. Or you can take a particular non-profitable line from some broker for one assured to get a profitable line that that broker might be able to place with you for some other assured?

A. Practically, that is done; theoretically, it should not be done. But that is the practical operation of the business.

Q. Does a general agent have all these same powers and duties as to underwriting which you have attributed to branch managers, or does he have different powers and duties?

A. I would say that the general agent to almost the same degree has the same powers that a branch manager has, subject, however, to that branch manager's supervision if he is reporting through a branch manager. My reason for mentioning that is that some agents will report direct to the home office. If those general agents report direct to the home office, then they have the same responsibilities as the branch manager.

Q. You spoke just now of the manner in which the degree of success of a branch manager was measured, and indi-
[fol. 141] cated that it was measured as well by the quality of the business produced as its quantity. Is that same thing so of a general agent?

A. Yes.

Q. Would you say that in order to be a successful general agent a party must conform to substantially the same standards of conduct in deciding what risks to write and how far to go in insisting upon the company following a liberal claim policy, and what so-called services shall be rendered to assureds, as a branch manager would follow in connection with such matters, or would you say that a successful general agent may properly follow different standards in these regards?

A. I think that the same standards would apply for both the branch manager and the general agent.

Q. When an agent countersigns a contract not produced or written by himself, but at the request of the home office or of some other agent or branch manager in another production territory, what does he do?

A. Merely countersigns the form that is sent to him, and returns it to the office of origin.

Q. In such a case, of an agent being asked to countersign a policy which he has not produced, does he write the contract which is to be countersigned, under the practice of the business, or does the producer or the home office write it?

A. Well, in this company the producer or the branch office or the home office writes the policy, but not the countersigning agent.

[fol. 142] Q. Do you know whether that is generally true in the business?

A. It is true in so far as I have any knowledge.

Q. Do you think you know what the practice is?

A. I would think so. In my experience, that has been so. I have never had any experience that would indicate that the countersigning agent wrote the policy.

Q. You are talking here only about the casualty insurance business; you are not talking about the fire business?

A. That is correct.

Q. Where copies have to be written for filing with voluntary or compulsory company bureaus, or with state authorities, does the countersigner make those filing copies, or is that done by the same party that writes the contracts themselves?

A. We file in this company through the branch office that produces the policies.

Q. Is what you have said as to who writes the contract, also true as to amendments to contracts and copies of amendments?

A. That is correct.

Q. When a countersigner performs his function of signing his name on a contract, does he notify the party who is assured by that contract, or does he notify the party that produced it that he has countersigned it, or does he just send it back to the man that sent it to him and asked him to countersign it, and not do anything else?

A. In my experience the countersigner has merely returned it to the source from which it was sent to him.

[fol. 143] Q. Without notifying anybody else?

A. Without notifying the particular assured in the case.

Q. Does such a countersigner have any contact ordinarily with the assured or his broker?

A. Ordinarily he would not have a contact with the assured or his broker, due to the fact that he countersigned the policy.

Q. When so requested to countersign, how does he determine whether to write his name on it and send it back, or report the request to some superior and ask for special instructions, or to just send it back and say he won't countersign it? How does he determine which of those courses to take?

A. The countersigning agent usually has a list of offices furnished to him by the home office for which he executes the countersignature of the endorsements or policies.

Q. is it his duty to furnish the countersignature when requested by those authorities?

A. That is correct.

Q. And what would his action be if somebody asked him to countersign that was not on his list?

A. I wouldn't know what his action would be, but I would assume that he would communicate with the home office of the company issuing the contract to determine whether or not it was in order for him to countersign that policy.

Q. Would such a countersigner ordinarily discover any failure in the contract to provide the particular coverage which the assured wanted?

A. No.

[fol. 144] Q. Would he have any means with which you are acquainted to determine by inspection of the policy whether it did constitute the coverage that the assured wanted?

A. He would not.

Q. Suppose the premium rate was erroneously too high or too low, could he determine from a study of the policy that that was so, in every case?

A. Not in every case.

Q. Suppose the name of the assured was wholly erroneous and described an entirely different person or corporation from what was intended to be assured, could he discover that?

A. I would not think so.

Q. Would he have a means of which you know, by which he could check that?

A. Not to my knowledge.

Q. If there should be inadvertently attached to or omitted to be attached to the contract, amendatory riders or special provisions, would he be able to discover the inadvertency in most cases?

A. In most cases it would be my opinion that he would not be able to discover it.

Q. Would he have a means to know whether the attachment or failure to attach was advertent or inadvertent?

A. I would not think so.

Q. Who does have the responsibility for all these matters which you say the countersigner has no capacity to deal with?

[fol. 145] A. The producing agent or the branch office.

Q. Is it completely understood by the companies for whom these countersigners are provided, that the responsibility does rest exclusively there?

A. Yes.

Q. Does the countersigner ordinarily have a copy of the contract and of subsequent changes provided to him for retention by him purely as a countersigner, as distinguished from the fact of the retention by the Claim Department that may be in the same building or office?

A. We do not make it a practice of having the countersigner keep a copy of the contract, but we do file with the local claim office in that territory, copies of our contracts for claim service purposes.

Q. Comparing the time spent on the countersignature of a contract by the countersigner and the time spent on it by the producer, who usually spends more time?

A. The producer spends a great deal more time than the countersigner does in signing the policy.

Q. Comparing the information as to insurance matters needed to be used by the countersigner and by the producer, who needs to have more information in order properly to discharge his duties?

A. The producer.

Q. Is that discrepancy large or small?

A. Very large.

[fol. 146] Q. Comparing the efforts to be expended by the countersigner and by the producer, who has to expend more effort?

A. The producer.

Q. Is that discrepancy large or small?

A. Very large.

Q. Comparing the skill that the two men have to employ, which has to employ the larger degree of skill?

A. The producer.

Q. In comparing the responsibility incurred by the two, who incurs a greater measure of responsibility to the company?

A. The producer.

Q. Are those two last discrepancies large or small ones?

A. I would say they are large discrepancies.

Q. Supposing that only the countersigner could deliver a contract so countersigned to the assured, instead of his returning it to the party who requested the countersignature so that the producer would make the delivery, would that have any effect on the expense to the assured and the company and the time consumed in closing the contract?

A. It would increase the time in closing the contract, and it would cause inconvenience to the assured.

Q. At the time of the deliveries of contracts, is it sometimes necessary for assureds and parties making deliveries of contracts to discuss the terms thereof?

A. Yes, it is.

Q. Are they ever written for delivery in a somewhat different form from the form proposed and expected by the assured or his broker?

[fol. 147] A. Occasionally, to meet particular conditions existing on a risk, it may be necessary to alter the form by endorsements.

Q. Does it sometimes occur by reason of these matters or others that the decision of the assured as to whether to accept a particular contract in a particular form in which

it is written is not definitely made until its delivery is tendered?

A. That is right. It does.

Q. Would you say that those things could be attended to by mail and between strangers as well as they could be attended to face to face between personal acquaintances?

A. I would say a face to fact contact would be more preferable than one by mail.

Q. Would you think from your experience that assureds would as readily conduct correspondence about such matters as they would talk verbally about them?

A. No.

Q. How would it affect, if at all, the trouble and labor and cost of the accounting for producers' commissions, if the countersigner should be required to receive them instead of the producer receive them?

A. I would say that it might increase the accounting difficulties.

Q. Under the usual contracts of producing agents with their companies, and under the usual arrangements of producing brokers with company agents in respect to settlements for premiums, does the producer deduct the amount [fol. 148] of his commission and remit the net, or does he send a gross premium to the company and let it send back the commission?

A. The usual practice is for the producer to collect the premium and remit a net amount to the company, although I have known instances in which the assured insisted upon sending the entire premium to the company, permitting the company to then pay the commission to the producer.

Q. Those would be cases ordinarily where a broker rather than an agent was the producer, would they not?

A. Yes; and those are rare cases.

Q. Having reference to these brokers who produced the bulk of premiums referred to in the table in the complaint, would you say that such brokers pay any particular attention to the individual contract needs of their customers and devote large amounts of time to those needs, or would you say the business was done more or less casually and without those factors being present?

A. Well, I would say primarily it depends upon the particular broker. The successful broker today, however, is the one who devotes a considerable amount of time and study to the forms of insurance that he sells to his clients, to the

rates that he obtains through the various means of safety engineering, and so on.

Q. These brokers that produced these contracts that we spoke of in the complaint, and produced them in places like New York City and Philadelphia and Cleveland and various places around the country not including Virginia, are they brokers of that type as a general rule, or are they as a general rule not brokers of that type?

[fol. 149] A. I would say at the present time they are brokers of that type.

Q. Do they usually have small organizations or large ones, those brokers?

A. That type of broker handling national risks as a rule has a large organization, quite extensive.

Q. Are they usually afforded opportunity by their customers to study their loss experience data, or is there any reason why the customers withhold that opportunity from them?

A. Live wire brokers today obtain from the carrying company periodical reports of the loss ratio data submitted to them, and thereupon institute what they consider the necessary measures to be taken by the assured under their direction with the assistance of the company.

Q. What would be the aim and object of those measures?

A. The primary aim is to reduce the cost of insurance through reducing incurred losses. In other words, the cost of insurance directly results from the cost of losses to the carrier, and by reducing the incurred losses he can thereby reduce the cost of insurance.

Q. He can get a lower premium rate for the insurance?

A. That is right, through the rating plan applicable to the risk.

Q. Suppose an industrial corporation placing this business of which we have been speaking, places it in one policy through one producer under circumstances under which it [fol. 150] is lawful to receive a lower premium rate than if it divided that business and scattered it through various producers in the localities of coverage?

A. Through the operation of experience rating plans and also through the operation of the retrospective rating plans, and interstate rating as applying to those plans, it is to the advantage of the insured to concentrate as much premium as possible under the one contract in order to increase the credibility of the rating.

Q. Isn't it a fact that as an underwriter fixing a premium, a greater consideration should be given to the loss experience if it involved a large number of risks than if it involved only a small number of risks?

A. I would say that affecting a larger number of risks it would have greater credibility.

Q. And do I understand that it is often possible by insuring risks countrywide in one policy rather than by insuring them in separate policies in the localities of the coverage, premiums are at times lawfully reduced for these big assureds?

A. That is correct.

Q. Do you say that these brokers who produced these contracts we spoke of in paragraph 7 of the complaint, and agents who produced those contracts, are ordinarily people who gain those advantages for their assureds under those contracts?

A. Yes, I would say so.

Q. About these manuals of information and instructions [fol. 151] for employes of assureds, do the producers always pay for those things, or the companies sometimes pay for them, or who pays for them?

A. The companies, I believe, as a rule pay for those manuals.

Q. Could you give an outline of the average contents of the manuals that the employes of assureds have as to how they must act in certain conditions. Do they say to the local employes of their assureds what they shall do if they want to increase a particular coverage?

A. The broker may draw up a separate manual of instruction and furnish that to the assured to be distributed among his employes, telling them what to do in the event of certain accidents, or how to conduct themselves in the operation of an automobile. To give an illustration, we have a particular large fleet of oil trucks operating nationwide, and in cooperation with the broker we issue a manual of instructions to all drivers of that fleet, and that manual of instructions is very definite in what he has to do under all circumstances in connection with the manner in which they drive the car and what they must do when an accident arises and a claim results.

Q. You say the broker takes a part in that?

A. Yes.

Q. And the assured co-operates in that, too?

A. That is right.

Q. And all that is done right here in New York where the business is produced?

A. That is right.

[fol. 152] Q. And covers for the whole country?

A. That is right.

Q. Do these brokers confine their services to taking things as they find them in the affairs of their assureds and providing contracts containing coverages which they feel are needed, or do they also extend their service to making suggestions as to modifications of practices of the insured to remove the needs for coverages, or to lessen the breadth of coverages which are needed?

A. Of course, that to a large extent depends upon the individual broker. The successful broker today gives such services that will make the assured believe that he is actually earning his entire commission. He spends a great deal of time in analyzing his contracts, and analyzing the assured's practices, analyzing the assured's loss ratios, and in studying the rating changes that take place in the particular state. Unless he does that, he is very apt to lose the business.

Q. Do you mean by that the particular state of production, or all the states?

A. All the states in which he may provide coverage.

Q. Will these brokers be able to do this without any compensation except their commissions, in your opinion, if they only receive half their commissions for production which they now receive?

A. I would say that it would lessen the ability of the broker to perform those duties if he were to receive 50 per cent of the commissions that he now receives. In other words, it would force him to reduce his organization.

[fol. 153] Q. If he could make the assured make that up to him, however, then it would not affect his ability at all, would it?

A. No. That is right.

Q. Could these services of which we have been speaking be performed for these assureds by producers residing at places remote from the principal offices of their assureds as readily as they could be performed by the producers residing in the same places as the principal offices of the assureds?

A. It is my opinion that they could not be performed as effectively as they could be at the office of the producer residing in the same territory, or in constant contact with the head office of the assured.

Q. Is it a matter of records or a matter of employe personnel of their assureds, or what is it, a combination of both, or what?

A. I think we are developing the obvious in that, because of the fact that the insurance is as a rule placed by the assured in the particular locality in which the principal office is located; in other words, the tendency is to place the business in the large centers if the home office of the assured is in the large centers.

Q. Would you say that these services are as generally furnished by producers in small towns with small volumes of business as by producers in large cities with large volumes of business?

A. I would say, because of the fact that they do not possess a large organization, they would be handicapped in furnishing the same service that a producer in a large center would be able to give.

[fol. 154] Q. Do the branch offices and the general agents in New York City compete with the brokers for the good will of individual assureds, or do they in the main deal with assureds only through the brokers?

A. They only deal with assureds through the brokers.

Q. Why is that?

A. For the simple reason that the branch manager could not afford to ignore the producing broker or agent by dealing direct with the assured without consent of the produeing agent or broker.

Q. Suppose that instead of being a branch manager that you are a general agent, would you ignore the broker there, or would you ordinarily deal with assureds only through brokers in New York City?

A. Only through brokers.

Q. Does the general agent have the same reason, that he wants to have the good will of the brokers and get his overriding commission?

A. That is right.

Q. And if he competed with the broker?

A. If he competed with the broker, the broker would naturally assume that he was building up a further competition in connection with the handling of his risk. It would

be not to his advantage to deal with that kind of a borough agent or general agent.

Q. I will ask you to assume that in 1937 the total premiums for Virginia coverage, as returned for premium taxation by the Travelers Insurance Company, was $1,056,951, and that The Aetna Casualty & Surety Company's similar figure was $464,564, The Maryland Casualty's similar figure $539,236, [fol. 155] and your company, The Fidelity & Casualty Company of New York $486,603. Leaving out the Travelers, is there any single firm of brokers in New York City, one of which places with one plaintiff company in one year contracts with as much premiums as the whole Virginia premiums of that company?

A. Yes.

Q. Does such a firm only place its casualty and surety contracts with substantial amounts of premiums in one casualty company, or will such a firm divide its business in substantial parts between two or more companies?

A. Two or more.

Q. Will such a firm also place fire insurance contracts involving substantial premiums?

A. Yes.

Q. Among the agents and brokers in New York, who you would estimate to place business with $1,000,000 or more in premiums annually, would you say that there were only one or two such firms, or from ten to twenty?

A. I would say there were from ten to twenty.

Q. Was this business in some years, according to your estimation, with particular brokers' firms greatly in excess of $1,000,000?

A. In some instances it would exceed greatly $1,000,000; in rare instances.

Q. Do the more important ones of the brokerage firms have offices only in one city, or do the more important of these firms have offices in various cities of the country?

A. The more important have offices in various cities.

[fol. 156] Q. If your company or individuals among the plaintiff companies should have declined to pay the brokers who produced the contracts referred to in paragraph 7 of the complaint, commissions at the rates you did pay, and when offered that business had stipulated you must have it at commissions of one-half of those rates, or if you should now make such a change effective, what effect would it have had on business in the past, or in your opinion would

it have on business in the future, so far as your company getting its part of it?

A. I believe it would drive a certain portion of that business into the hands of the mutual companies or State Funds or Lloyds Associations.

Q. Are there or not honestly administered and sound financially companies that are not qualified in all the states of the Union?

A. Yes.

Q. Would it be practicable for some of this coverage to be placed in companies not admitted in Virginia, without loss of their commissions to their producer?

A. My thought on that would be that it would be a tendency primarily to place that business with an admitted company, but a company not paying a commission, but where the broker or producing agent might obtain his remuneration through a portion of the dividend.

Q. Are you sufficiently familiar with relations between producers of your part of this business referred to in the complaint, with the assureds, and the relations of your com- [fol. 157] pany itself with these assureds, to have an opinion that you would consider reasonably well founded, as to the extent to which these producers could have taken this business away from your company if they wanted to?

A. Yes.

Q. Will you try to discuss that situation, in order to bring out fairly on the record to what extent these producers could have diverted this business away from your company if they wanted to?

A. It is not only the producers that could have diverted it, but taking the instance of the large oil risk that I have just cited here, if we should, through the increase of the total cost of the acquisition of that business, increase the cost to the assured, I am fairly confident—in fact, I am completely satisfied—that that assured would no longer carry insurance in this or any other company, but would probably go into self insurance, and that the only reason why they are carrying insurance in this company is due to the fact that we have this restricted acquisition cost.

Q. Having reference to the Aetna or the Maryland or the Travelers, if your company cut these producers' commissions and any of those companies did not cut them, would the producers in ordinary cases, have the capacity to transfer the business to those companies, or would they not?

A. I think in ordinary cases they would have the capacity to transfer those cases to companies that would not reduce the producers' commissions.

[fol. 158] Q. But you would limit that by saying that there is a proviso attached to it, that they are prominent and reputable companies with good organizations, paying their liabilities and servicing contracts?

A. They would have to be reputable; that is right.

Q. I think you are familiar with the thirty odd plaintiff companies in this suit, and are familiar with the fact that other leading companies, such as the American Surety Company, National Surety Corporation, U. S. F. & G., Employers Liability, and various others, are not among the plaintiffs. Would it be equally practicable for a broker to transfer contracts heretofore placed with your company to such companies as those I have mentioned?

A. Yes, it would be possible.

Q. You use the word "possible" there. I used the word "practicable".

A. Well, it might be practicable.

Q. In the efforts of a branch manager in your city to increase the production of his office, or any similar efforts of the general agent, would it be an unusual or extraordinary thing for him to approach a broker to give to his office or his agency a part of the brokerage business hitherto given to the offices of other companies or given exclusively to the offices of other companies or of other agents? I ask you, would that be an unusual thing?

A. No, that is a common practice.

Q. In making such an effort, would such a general agent or branch manager customarily go to the assured, or would [fol. 159] he go to the broker that placed the business, to get that shift made?

A. He would go to the broker that placed the business.

Q. Would you say that his ability to get such a shift made, would be materially influenced by the friendliness of the broker to the idea of making the change, or would you say that the friendliness of the broker to making the change would not be very important?

A. I think it would be of paramount importance to the making of the change.

Q. Is it a matter of reasonably frequent occurrence, that for one reason or another when such efforts are made they are successful efforts?

A. Yes. Except in rare instances, the broker can pretty well determine the placing of the business by a company.

Q. You mean by an assured?

A. No, his placing by the company, that is, in the company.

Q. He can pick out the company?

A. He can pick out the company, except in rare instances.

Q. Are you informed as to whether or not there are any of the larger mutuals who pay commission?

A. Yes. I know there is one larger mutual that pays commissions.

Q. Is that the Lumberman or the Liberty?

A. Lumberman.

Q. Are there any brokers in New York that place business with these mutuals?

A. Yes.

[fol. 160] Q. Please state to what extent, if at all, the cost of casualty and surety protection has been a decreasing or increasing factor, with the passing of recent years, in the problem of nationwide corporations doing business sectionally or nationally to operate at a profit.

A. It has become a very important part of the every-day administration of these national organizations, and as such these organizations have organized their own insurance departments under a competent insurance manager, to reduce as much as possible the total cost to them of their insurance premiums.

Q. Is that personnel scattered throughout the territory of its industrial or commercial operation, or is it centered in the home offices, or in a very few divisional offices?

A. The Insurance Department as a rule is centered in the home office.

Q. Has this development of having at the home office personnel devoting particular attention to insurance matters, had any effect on the practices of these large assureds in reference to whether they place their various contracts in the different localities of the coverage or place them in the locality where their insurance personnel is located?

A. It would have the effect to have the assured place the insurance in the particular locality where the insurance manager or where the Insurance Department was located.

Q. Would you say that there is a greater tendency today to do that sort of thing than there was ten years ago?

A. I would say that the tendency is increasing all the time.

[fol. 161] Q. Do you think that is the result of change of attitude by the management of these assureds, or is it not possible that there is simply more absentee ownership and control of business and property and risks today than there was five or ten years ago, or twenty or thirty years ago?

A. I would say it is due to the increased concentration of the particular large risks of their departments at one home office location.

Q. If a chain store or one of these distributors of gas and oil, of which you have been speaking, or a bus line doing business through a number of states, adopts a policy to cover certain risks and to cover particular risks in particular amounts, does it usually have a different policy in one locality from what it has in another locality of its operations, or would it have $10,000—$20,000 automobile liability probably all over the territory, and if it has automobile liability on any of its tank trucks, would it likely have it on all of them?

A. If it has it on any of them, it would probably have it on all of them, and it would have it covered under a blanket policy with schedules showing the various exposures, and listing the equipment covered under that contract.

Q. And the same way as to the bus company, if it had liability policies on its buses running between Richmond and Washington, it would probably have the same kind or amount covering on the trip between Washington and Baltimore, or Baltimore and Wilmington, or Philadelphia and New York; is that right?

[fol. 162] A. It would probably have the same limits as this oil fleet I just had reference to, that carries different coverages on different types of vehicles.

Q. I am talking about the same type.

A. On the same type they would carry the same limits.

Q. Taking the chain theatre, like Loew's, or Wilmer & Vincent, I do not know how they place their insurance; if they had a public liability policy on a house at Norfolk, would they likely have the same kind of coverage on their houses in Richmond, in Washington, in Baltimore, in Philadelphia, and so on?

A. Yes, they would carry the same amount of liability coverage in all cases.

Q. And the same kind of coverage?

A. Yes.

Q. And that would be so, perhaps, of hotel chains, drug chains, utility companies, in different states and the like?

A. Yes.

Q. Would it be fair to say, then, in discussing the terms of such a contract and the premiums to be charged, and the amounts of the coverage with various different producers in various different parts of the country, a representative of an assured would, to a large extent, be discussing similar things with these separate people?

A. Yes. He would be at that disadvantage.

Q. And if he had one producer through whom he placed all this coverage, his time and labor would be then greatly abbreviated?

A. It would be greatly reduced.

[fol. 163] Q. Having reached an understanding with one producer that you want, for instance, a $10,000-$20,000 coverage on a certain type tank truck all over the country, does he cause to be issued to the assured a separate policy covering each of these trucks, or does he issue one policy covering them all?

A. We issue a blanket policy, with a schedule attached to the policy giving a list of the equipment covered.

Q. And that would be so even if coverage was in a number of states?

A. That is right.

Q. In such a situation the company issuing the policy would discharge its duty under the laws of the various states where so required, either to issue underlying policies or procure counter-signatures, would it not?

A. That is right. It would issue underlying policies for filing purposes and for counter-signature purposes.

Q. So far as the assured was concerned, as distinguished from the obligation of complying with these laws in these scattered states, he would get one master policy?

A. He would get the one contract.

Q. And when it came to accounting for his insurance costs, he would only have one account about that contract, of one premium?

A. That is right.

Q. And when the assured paid the premium, he would make one payment to one producer for all of it?

A. Yes. I may say at this point that the tendency today [fol. 164] is towards simplification of all of the contracts and forms of coverage through the issuance of one contract rather than through a number of contracts which the assured would have to wade through.

Q. Am I correct in my understanding that contractors, expecting from past experience to do work in various parts of the country, and not knowing from time to time where they are going to work next, procure forms of workmen's compensation and liability contracts in which neither the places of coverage nor the amounts of premiums to be paid are known at the time the contracts are written, but which automatically cover everywhere in the United States and sometimes in Canada, with annual audit determinations and settlement of premiums?

A. Yes. The tendency is to issue a blanket compensation or contractor's public liability policy covering wherever the assured may operate, if he is a contractor or a large industrial organization.

Q. Does this have the effect of reducing the labor and time of the assured, by dispensing with the necessity of his making these contracts for the individual coverages in the states, of various works?

A. Yes, sir.

Q. In such cases would it be practical to allocate premiums of commissions or premium taxes to producers or to states in the various localities at the time the contract is made?

A. I do not believe it would be possible.

Q. If such should be required, would it be necessary to cease to write these particular forms of contracts?

[fol. 165] A. No, it would not, but it would increase the difficulty in handling that type of contract. For instance, we may issue a blanket contractor's policy at a nominal deposit premium; and subsequently on audit that premium may run to $1,000 or so. It is only after the audit is made on that contract that we can determine the states to which the premium should be allocated, or the coverage.

Q. The fleet automobile liability policies also cover cars of described types, though acquired in new localities during the term of the contract, do they not?

A. That is right.

Q. And this is true of the form of various other blanket contracts?

A. Yes.

Q. In many cases there would be locations of risks not at one point in a state, but at numerous points in a particular state, would there not?

A. That is correct.

Q. And an allocation as between different agents and producers in a particular state would also involve the same difficulties?

A. Yes.

Q. Would you say, from your knowledge of their operations,—and if you do not feel you have information in the matter, of course you are at liberty to say so—whether it is the custom of the oil and gas distributors to have at their filling stations, or the theatre chains to have at their vari- [fol. 166] ous moving picture houses, or the merchandising chain stores to have at their various stores throughout the country, records covering insurance transactions and employees dealing with those matters?

A. The only record I believe a local theatre manager or a gasoline station or merchandise unit would have, would be the name of the nearest claim office of the company carrying his insurance, so that they would be able to report promptly the accidents that occur in connection with that operation.

Q. And if that company adjusted claims through an independent adjuster, or an attorney, rather than through its own company-maintained Claim Department, he would have the address of the independent claim adjuster or attorney; is that right?

A. That is right.

Q. Going on with this discussion of these contracts mentioned in the complaint, if an assured should decide that instead of having a $10,000-$20,000 limit of coverage on particular vehicles, or $10,000-$200,000 limit on a particular public liability contract; and he wanted to change his limits to $20,000-$40,000 or $20,000-$400,000, would it be practicable for him, if that business had been placed with one producer, to secure those changes country-wide by the one direction?

A. Yes, sir.

Q. Similarly, if he wanted to reduce them to $5,000-

$10,000, or $5,000-$50,000, if placing his business with one producer it could be done in one interview?

A. That is right.

[fol. 167] Q. Are decisions of that sort made at the principal offices of the assureds?

A. Yes, sir.

Q. When an assured comes to select a producer through whom it will place its contracts, what standards would you say were observed by an assured in making that selection?

A. Well, a producer is selected first for his standing in the community, his reputation as an insurance man, the particular companies that he may have contacts with, and the type of assureds and risks that he may now be servicing or placing.

Q. Speaking generally, is it fair to say that assureds generally go through these processes in selecting their producers through whom they place contracts?

A. I would think so.

Q. Suppose an assured embarked on a policy of segregating his coverages to the various localities of the coverages, would it sometimes be, supposing there are ten coverage localities, that the ten agencies that he would think were the most suitable for his purposes in those localities might represent among them a considerable number of different companies, and not all ten represent the same company?

A. That is correct.

Q. Would you sometimes encounter situations where the most suitable local agent did not represent the most desirable company?

A. In certain communities that might be possible.

[fol. 168] Q. Wouldn't you often encounter situations where the most desirable agent though representing a company very desirable for certain coverages was not recognized as being so desirable a company for other coverages?

A. Yes. For instance, the particular agent might represent the company that had a splendid service organization for the servicing of a chain of theatres, in other words, its particular claims organization would be such that it was particularly adapted to servicing that kind of a risk, whereas that same carrier, insurance carrier, would not be as well qualified to administer the claims services on a large automobile fleet or on a particular malpractice form of

coverage, if they were insuring, for instance, a society of dentists or doctors, which is a particular type of claim, technically involved, in that kind of a risk.

Q. Illustrative of that, the Aetna in certain localities is peculiarly preferred for the malpractice liability?

A. That is correct.

Q. Would it be a correct assumption that ordinarily either a producer or a company could act more efficiently in the interest of the assured in respect of coverages of which it happened to have had a large volume, and therefore a large experience?

A. Yes, I believe so.

Q. Are there any producers in New York City or elsewhere, which have a general reputation for being specialists in the handling of particular coverages or the casualty and surety needs of companies in particular lines of business?

[fol. 169] A. Yes, there are. For instance, there is one broker that has a number of oil risks, another broker that handles a large volume of theatre liability insurance, and some other brokers specialize in the writing of chain store lines.

Q. And is there a tendency for other assureds with those needs, to go to people with thus established reputations in those particular lines?

A. The tendency is for the broker that handles one risk of that type to solicit other risks of that type through the contacts that he has built up and through the reputation that he has built up with one particular assured.

Q. In other words, if he places one theatre chain the personnel is apt to be acquainted with the personnel of other theatre chains, and it helps him to get the other chains?

A. That is right.

Q. There is the man I believe you mentioned to me the other day who has an outstanding reputation as a specialist in the coverage of transportation corporations; is that right?

A. That is right. He specializes in the handling of railroad and truck line insurance.

Q. And that has a snowball effect, that reputation?

A. That is right.

Q. Is it your observation or information that these specialists are developed as readily in the smaller communities

and localities as in the larger centers of population and wealth?

A. It is my observation that they are developed in the larger centers of population.

[fol. 170] Q. Upon the assumption that an assured with a principal office in New York City has placed its business sectionally or nationally with a producer in New York City, and that a controversy arises between the assured or his broker representative on one hand and a company on the other, or that any exceptional questions arise between them though not necessarily controversial, is it customary for the parties to meet personally and discuss that, or do they correspond by letter?

A. They usually meet personally to discuss such problems.

Q. Please say whether these assured placing this business in the locality where the principal office of coverage is in other states suffer detriment through not having placed it through various producers in the various coverage localities, and if you think they do suffer detriment, state why you think they do suffer it.

A. Well, in the various contacts I have had with the assureds over a number of years—and I have contacted some of the leading national corporations, and many of their executives are personally known to me—I have never found a particular case in which any of them suffered any hurt through the fact that their business was placed through one producer.

Q. Are you aware of the fact whether or not there is sometimes a loss of local good will involved through not patronizing a local man?

A. I could not say whether there is or not.

Q. Am I to conclude that you think these assureds not [fol. 171] patronizing the local men in the coverage localities are just as favorably positioned when claims arise as they would be if they had a local man interested in pressing their claims for them?

A. I would say that due to the fact that the claims are handled through the salaried representatives or the claim representatives employed by the companies, that this has little or no effect.

Q. What about inspections when they are either desired by the companies or desired by the assureds for contract purposes? Are they as easily available to people who have

not had a producer concerned in the locality of coverage as they are available to people who have had such local producer concerned?

A. Yes. They are just as easily available.

Q. They are also made by salaried people, are they?

A. By salaried engineers and inspectors of the companies.

Q. Would you say then that there would be no variation between the results to the assured of his having a workmen's compensation risk in far Southwestern Virginia placed through a New York producer, or having had it placed through a Norfolk producer or a producer in Giles County or Lee County, Virginia; or would you say that there would be variation in the results, relative favorableness of the results to the assured because of the variety in the location of the producer between New York City and Norfolk and Lee County or Giles County, Virginia?

A. I believe that if it were part of a blanket contract covering in various localities that there would be no variation in the service rendered by the company, simply be- [fol. 172] cause it was placed through a New York producer rather than through the local producer.

Q. Suppose The Life Insurance Company of Virginia placed its public liability contracts on all its foreclosed real estate through many states with one producer in Richmond, Virginia, or suppose that the Universal Leaf Tobacco Company put its liability lines in its various localities, or suppose that the Richmond Greyhound Lines covered its buses both on its Virginia routes and other routes with a Richmond producer, would you say that those assureds would be in all respects as well off as if, as to the life insurance company, they had gotten a separate policy on each foreclosed piece of real estate, and as to the Universal on each plant, and as to the Richmond Greyhound, on the lines in each state?

A. Yes, I would say they would be just as well off.

Q. Having reference now to risks which are in different parts of a particular state though all in the same state, as, for instance, a chain of theatres with its head office in Richmond, but with theatres throughout the state, is it your idea that if all of that business was placed through a producer in Richmond, all that would be expected of a producer would be gotten as readily as if the business were split up and a piece of it put into each locality where there was a theatre?

A. I would think so.

Cross-examination.

By Mr. Staples:

Q. What territory is within the scope of your office?

[fol. 173] A. We write risks covering throughout the United States. We produce risks through New York brokers and agents in the five boroughs of New York City.

Q. The territory within which your office is active in the soliciting of risks from brokers, is New York City, then?

A. That is correct.

Q. Do you have any local agents of your company in New York City?

A. Yes, we do.

Q. Do they represent other companies than yours?

A. They may.

Q. What is the particular difference in the relationship between your company and one of its agents, and your company and a broker?

A. If the agent that you have reference to is a borough agent, the difference is rather marked; in other words, the broker or local agent is looked upon as a producer, whereas the borough agent is a producer through the broker or local agent. He acts in a sort of supervisory capacity for the production of business through these sources.

Q. He has working for him what you might call solicitors or subordinate agents?

A. That is correct.

Q. Do these subordinate agents who work for him have authority to countersign the contract?

A. No. Those solicitors who work for the borough agent or the general agent, in my knowledge only act to develop [fol. 174] business from other agents and not as direct solicitors of assureds.

Q. You mean that the persons employed by a general agent do not directly solicit business from an assured in New York?

A. I am talking now of a borough agent.

Q. What is your answer with reference to a general agent?

A. A general agent, yes, a general agent may have employes working for him to solicit direct from assureds.

Q. And a general agent also solicits direct from assureds, does he not?

A. That is correct.

Q. The general agent compensates the agents under him by giving them a certain part of the commission?

A. They give them the producer's commission.

Q. And he on that business receives in addition an overriding commission?

A. Yes.

Q. When a contract is brought to your office by an agent or a producer, do you or anyone in your office make any direct contact with the assured and discuss the matter with the assured?

A. Yes, very frequently.

Q. Why is that?

A. It assists the producer in selling his assured, and not only at the time of the solicitation but frequently during the period of the contract and over a period of years I am in constant contact with assureds and principal officials of such assureds.

Q. But you do not undertake to go direct to them and write any business of your company leaving out the broker or the agent?

[fol. 175] A. Oh, no. All of the contacts are arranged for through the broker.

Q. And at his invitation, I suppose?

A. At his invitation in most instances. In certain particular cases where we become, as the company employe, well known to the assured, there is an understanding between the broker and the company that the assured can contact the particular individual in the company at any time at his convenience, without having to pass through the broker.

Q. That contact still is at the invitation of the broker?

A. That is at the implied invitation of the broker.

Q. Do the rates of the producer's commissions vary in the different states?

A. They may vary. For instance, workmen's compensation commissions are at a different rate in certain states.

Q. Within what ranges do they differ?

A. Within a very small range. For instance, the producer's commission in New York is eight and one-half per cent.; the producer's commission in most other states is ten per cent. The overriding commission in New York is 6½ per cent, in most other states it is seven and one-half per cent.

Q. If a broker brings you a contract in a state where the producer's commission is ten per cent, what do you pay the broker in New York?

A. The broker gets the rate of commission that is paid in that state.

[fol. 176] Q. In the state of the coverage?

A. That is correct; in the state of the coverage.

Q. Does he get the broker's commission or producer's commission, or does he get the same commission the general agent would get in the state?

A. He gets the producer's commission, the broker's commission.

Q. What is the difference between that and the general agent's commission, if it is a Virginia contract, let us say?

A. I do not believe I would be qualified to give you the difference in the commissions there.

Mr. Christian: Is that workmen's compensation insurance?

The Witness: No, I do not think it is limited to any form of insurance.

Mr. Staples: No, it is not.

Q. You are not able to state, then, whether the New York broker would receive the entire commission which would have gone to a Virginia general agent if the contract had been written through such general agent?

A. I am able to state that the New York producer would only receive the straight brokerage commission in New York.

Q. And what would become of the difference between the general agent's commission and what the broker gets?

A. I would not be able to tell you that.

Mr. Christian: Counsel for plaintiffs would admit that if it is not paid to anybody by the company, it will remain in [fol. 177] the treasury of the company, and would be available not only to meet production and field supervision costs, but other expenses of the operation of the company, if that is what you mean.

Q. I believe you said that you worked in the Rating Bureau at one time?

A. That is right.

Q. What elements, generally speaking, compose a rate? What factors go into the making of a rate?

A. The elements entering into the make-up of a rate are the incurred losses, or, in terms of rate, the pure premium plus the overhead factors such as acquisition cost, claims expense, inspection costs, the home office administration, payroll audit expense, and taxes.

Q. What is included in the term "acquisition cost", as used by you?

A. Acquisition cost includes the producer's commission and the supervising agency commission.

Q. Do you mean the overriding commission of a general agent?

A. Yes, or a branch office.

Q. Does a branch office have any commissions?

A. No; a branch office operates on a salaried basis, but the difference between the local agency commission or the producer's commission and a supervising agency's commission is taken up in the salaries of the branch office.

Q. It is not paid, though, in the form of commissions to the employe of the company?

[fol. 178] A. No, it is not.

Q. But the company is saved that overriding commission which a general agent would get if the office was operated by the general agent as his own office and he did the supervising of the other agents who were producing the business; is that correct?

A. Yes. The general agent, in receiving the maximum commission on the risk, functions in much the same manner as the branch office. In other words, he pays his local brokers out of that total commission, whereas the branch office pays the local brokers the same way.

Q. Do you have a separate factor for field supervision expense?

A. Yes.

Q. What is that called?

Mr. Christian: I herewith file, as Plaintiffs' Exhibit No. 1, the National Rules regarding acquisition and field supervision costs for casualty insurance; and, as Plaintiffs' Exhibit No. 2, the National Rules regarding acquisition and field supervision costs for fidelity, surety and forgery business; also a supplement to Plaintiffs' Exhibit No. 1, to be designated as Plaintiffs' Exhibit No. 1-A.

(The papers referred to were accordingly marked as exhibits by the Notary Public: Plaintiffs' Exhibit No. 1, Plaintiffs' Exhibit No. 1-A, Plaintiffs' Exhibit No. 2.)

A. I refer to paragraph (b) of page 3 of Plaintiffs' Exhibit No. 1.

[fol. 178a] EXTRACT FROM PLAINTIFFS' EXHIBIT 1

C. Field Supervision Cost shall specifically include the following items:

1. Remuneration to Agents, Branch Office Managers, Assistant Managers and Salaried Special Agents.

2. Traveling expenses of Agents, Branch Office Managers, Assistant Managers and Salaried Special Agents.

3. The cost of policy-writing in Agencies and Branch Offices.

4. The cost of collection of premiums in Agencies and Branch Offices.

5. Rent, heat, light and maintenance of Agencies and Branch Offices.

6. Renumeration of clerical office force in Agencies and Branch Offices.

7. Exchange, advertising, postage, telephone, telegraph and express in Agencies and Branch Offices.

[fol. 179] Q. Who compiled these documents that you have just filed, these rules?

A. They are compiled by the Acquisition Cost Conference of the National Bureau of the Casualty and Surety Underwriters.

Q. What amount, or what percentage of the total premium for the payment of commissions to so-called brokers is there in these rules, if there is any specific provision for brokers?

A. That will be found in Item 4, page 2, as to the producers in various states.

Q. Is there any specific designation of a broker by the word "brokers" in these rules?

A. Brokers are classed as producers in accordance with paragraph 3, page 1.

Q. The specific point I am trying to get at is whether there is any provision here as to the rate of commission which is to be paid a broker, as distinguished from the amount of that particular factor of the premium which shall be used for the payment of the other items contained under the headings Field Supervision Costs and Production Costs and Acquisition Costs.

A. Yes. The acquisition cost is the remuneration paid directly to the producers, whereas the field supervision cost is the additional allocated to branch offices or general agents for their field supervision.

Q. These rules state that acquisition cost shall mean commissions to agents and producers: "No agent or producer receiving a commission shall receive any salary or [fol. 180] allowance of any kind except as hereinafter provided." What other provision is there that makes an exception permitting the payment of a salary to an agent or a producer who receives commission?

A. None that I know of.

Q. I believe you stated that it is customary for a branch manager to investigate and pass on the desirability of risks which are offered to the company; is that right?

A. That is right.

Q. Does your general agent also perform this function?

A. Yes, he does.

Q. A general agent, as I understand it, is the owner of the business that he builds up and produces from the standpoint of the future, is that correct?

A. That is correct.

Q. Does he not occupy a different relation to the assured from a branch manager of a company?

A. Theoretically he does; practically I believe his interests and the interests of the branch manager are very similar, both to the assured and to the company.

Q. Who establishes the policy of a branch office: the company or the branch manager?

A. The company.

Q. Who establishes the practice of a general agent's office: the general agent or the company?

A. I would say the company.

[fol. 181] Q. How many companies does a general agent generally represent?

A. One.

Q. Only one company?

A. As a rule.

Q. Do you know how many companies Davenport Insurance Corporation of Richmond represents?

A. No, I do not.

Q. Suppose it does represent more than one company, I will ask you to assume that it does represent more than one company, then which company establishes the policy of its office?

A. I would say that the company that it represents establishes the policy of its office as regards the business that it writes for that company; by that I mean the underwriting policy of the agency is established by the company.

Q. You confine yourself to the underwriting policy, then?

A. That is correct.

Q. In my question as to policy I had in mind more the policy of service to the assured.

A. That I believe would be developed by the agent himself as an agent; that would be his own policy.

Q. So that a branch manager has that policy established for him by the company, but a general agent would establish that policy for himself?

A. In so far as his service to the assured is concerned, that is correct.

[fol. 182] Q. Are you at all familiar with the activities of your resident agents in Virginia, outside of your branch managers' offices there?

A. No, I am not.

Q. You do not know anything at all about the service that these local agents render, do you?

A. No. I do not.

Q. Then if you are not at all familiar with the services rendered by your own local resident agents as distinguished from your branch managers in Virginia, the testimony which you have given on that subject is not given in the light of any information at all with reference to the conduct of business by resident agents in Virginia, is it?

A. Only with reference to the business that is produced through my own office; and on that I can speak with knowledge and authority, because I know that our assureds or my own office does not call upon the local agents in Virginia to service our risks.

Q. Do you mean risks produced in New York?

A. Produced in New York.

Q. Under the custom which has prevailed in the past, the resident agents have not had anything to do with that business, have they? They have not countersigned policies; they have not received commissions; consequently they would not be called upon for any services; is that correct?

A. That is correct.

Q. In other words, they have not been associated with the broker at all in handling that business?

[fol. 183] A. That is correct.

Q. As to what would be the service rendered by those local agents if they were so associated with the business and received part of the compensation for servicing the contracts, you are unable to state?

A. I can not tell, because that has not transpired yet.

Q. Is it customary for any brokers to place business in your company direct with resident agents in Virginia, as distinguished from branch managers?

A. You mean New York City brokers?

Q. Yes.

A. Not to my knowledge.

Q. You spoke of these combination rates which are obtained by the brokers where policies cover risks in a number of states, that is, one policy covers risks in a number of states, and you state that the combined rate is less than the sum total or aggregate of the separate rates which would apply if separate policies were issued in each state for the coverage involved in such state. I will ask you to explain how this is arrived at.

A. I believe I said that the rate had a greater credibility, and my thought involved is that that matter could be better explained by Mr. Leslie, who is an expert in the calculation of those rates.

Q. Do you not feel that you are able to explain that?

A. I think he could explain it better than I could. Yes.

Q. I believe you stated that a local resident agent was not in a position to know anything or find out anything about [fol. 184] any risk when he countersigns a policy. Isn't it true that if a local agent inspects a policy and he knows that the transaction covered by that policy or risk covered by that policy is located in Virginia, that he is able to familiarize himself with the factual situation presented?

A. My experience has been, that on business produced in New York City the local agent is rarely called upon by the local foreman or superintendent of a plant to render service

in that particular locality in regards to inspections or things, unless the business is placed through that particular agent.

Q. It has not been customary to place many of them through local agents in the past, has it?

A. That is right.

Q. But when they are placed through local agents, then that local agent can obviously get in contact with the local manager of the plant, or what ever the industry may be, and familiarize himself with the situation. Is that true?

A. He would of necessity have to do that.

Q. Then when a policy is sent to one of these countersigning agents who is to receive a part of the commission, naturally if he wants to discharge his duty he would do that, wouldn't he?

A. He might. He has never done it heretofore.

Q. He has never been given any part of the commission heretofore, has he?

A. That is correct.

[fol. 185] Q. There is no reason why he should have done it heretofore, is there?

A. He has been getting countersigning commission for doing it, but a very small amount.

Q. Has it been customary for your company to have its branch manager countersign?

A. I believe so.

Q. They have not paid him anything for that, have they?

A. No, not to my knowledge.

Q. Assuming that a local resident agent to whom a policy or contract is sent for countersignature has the contract before him and notices an apparent irregularity of some sort which raises some question in his mind as to whether the contract is properly drawn, he of course can inquire and raise any question that he likes with the broker, or he can also get in contact with the local representative of the assured; is that true?

A. That could be done, but I do not believe the local representatives of the assured would know enough about the business of insurance or the placing of that contract on a risk emanating from New York, to be able intelligently to discuss that particular phase of that business with him.

Q. He can at least raise that question with the broker and let the broker take it up with the New York representative, can he not?

A. I believe the full responsibility for the placing of insurance is in the home office of the assured where the con-
[fol. 186] tract emanates, and whatever conditions exist in connection with that risk, the insurance coverage and the responsibility for placing that insurance coverage is at the place where the business is produced and not where the particular policy may be countersigned.

Q. Then if a question of the kind I have referred to occurs to a local resident agent who is requested to countersign a policy, and if he has some question in his mind about the provisions of the contract or whether it is in proper form to cover the particular risk sought to be covered, your idea is the proper procedure for him to follow would be to communicate with the broker in New York or the New York agent who procured the contract and let that broker or agent take the matter up with the assured?

A. That is correct.

Q. You spoke of the expensive plant and equipment that these brokers establish in New York. What is the nature of that plant and equipment? What does it consist of?

A. Well, it consists of a number of experts in the various contractual needs of the assured. It consists of an Engineering Department. It consists of what we consider loss control work in tabulating and compiling accident records and assisting or working with the companies in loss prevention and loss control work.

Q. The companies have their loss control and loss prevention departments themselves, don't they?

A. That is correct, but the larger brokers, in order to earn their commissions and to justify their existence with the
[fol. 187] assured, have a very extensive plant of their own to supplement the work of the particular company with which they place the business.

Q. In other words, they do over again the same work that the company has already done?

A. I would not say that they do it over again, but I say that they supplement or assist or help the companies to do it.

Q. What do they do that the companies have not already done, or the various companies that they deal through?

A. They make in certain instances a more concentrated study of their assureds' needs than the company does. In other words, the company may establish with the co-opera-

tion of the assured, a safety engineering organization. The producing agent or producing broker may take part in that and supplement the efforts of the company; in other words make a more intensive campaign towards safety than the company or the assured alone would make, depending, of course, upon the particular broker or producer.

Q. Give me an illustration of what you mean by a safety campaign.

A. Take for instance a large fleet of a dairy risk located in Philadelphia. We insured that risk for automobile insurance, and we had a very high accident frequency and a very high loss ratio. The producing broker at considerable expense to himself, employed the services, the outside services, of a loss control expert, who made a study, in addition to the safety engineering activities of the company, of the particular and peculiar causes that existed in this particular risk, and as a result of that reduced the loss ratio to a very [fol. 188] large extent, and subsequently, of course, the rates followed suit.

Q. What do you mean when you say he employed an outside expert? In addition to his regular staff?

A. In addition to his regular staff, he engaged the services of this loss control division.

Q. Then that is not part of the regular services that that broker performs with his equipment and plant, is it?

A. It is. It is the service he now performs, having seen its efficiency and effectiveness.

Q. Then he has a regular staff of engineers?

A. That is right.

Q. And where do those engineers go to make that study?

A. The records of the accidents and losses are furnished to him by the statistical department of the insurance company monthly.

Q. Doesn't he study the physical plant?

A. Yes, and his engineers will go out through the country and inspect the plants equipped with the statistics furnished him by the company.

Q. In other words, in a case of that kind in Virginia, the broker would send his engineers down to Virginia to study the situation there, on a case of the kind that you speak of, is that right?

A. Yes, equipped with the statistics furnished to him by the insurance company.

[fol. 189] Q. There is no reason why the company should not furnish those same statistics to a local resident agent, is there?

A. Well, I think possibly there may be some misconception of what I am trying to prove here. We have no feeling towards the local producing agent as in comparison to the local producing broker. That is not the point I am trying to bring out. The only thought I have in this case is that the countersigning agent who merely countersigns a policy, does not perform the functions that a producing agent performs.

Q. He has not in the past, you mean?

A. He has not in the past.

Q. But he has never been compensated in the past, has he?

A. That is true.

Q. But there is no reason why he should not perform it, is there?

A. My thought is that he will not be called upon to perform it by the assured, that the assured will look to his local broker to perform those services.

Q. And there is no reason why the producing broker should not also look to the man that he is associated with in Virginia to render the local service there, is there?

A. It is purely my personal opinion that he won't.

Q. But you have had no experience of that kind, have you?

A. I do not know what will happen.

Q. There is no reason why he should not if he wants to?

A. He may. I do not believe it will be to his best interest to do it.

[fol. 190] Q. Don't you think if a New York broker has associated with him a local agent who is receiving a substantial part of the compensation in connection with the transaction, that he would feel at liberty to call on the local agent to produce such information and study as may be appropriate in the circumstances of each particular case?

A. I feel he would be at liberty to do it, but I do not feel he would have the inclination to do it.

Q. You don't mean to say that your local resident agents are incompetent to do that, do you?

A. No, I don't say that. I don't mean that as any reflection on local resident agents whatsoever. I do not believe the producing agent will delegate any powers or any work to anybody else that he can do himself. It would be pri-

marily a selfish motive. I think he would want to keep the entire servicing and handling of brokerage risks in his own control.

Q. There is no reason why he should not retain control, by merely asking his associate in Virginia to do his part, is there?

A. Except this, that he then puts in direct contact with his assured other producing units.

Q. Do you think there is some danger of the local man getting the business, under those circumstances?

A. I think so.

Q. Isn't that somewhat contrary to the ethics of the business, for a local agent to do the sort of thing you are speaking of?

A. I think it would be contrary to the ethics of the business, yes.

[fol. 191] Q. You do not mean to imply that your local agents are going to violate the ethics?

A. I do not think they ever have.

Q. I believe that there is sometimes a case where a broker changes the placing of a policy from one company to another; isn't that true?

A. That is right.

Q. And sometimes the assured changes his broker, too; isn't that correct?

A. That is right.

Q. If an assured, we will say, has a branch activity of some sort in Virginia and has established contacts with your local agent there through the broker in New York, isn't it true that the local agent of your company, we will say, could bring pressure on the local representatives of the assured in Virginia to retain that business in that same company, and in that way help the broker to retain the business instead of losing it?

A. I think that is possible.

Q. If a Virginia risk is produced by a New York broker, what branch manager's office gets credit for that, does the Virginia office or the New York office get credit?

A. The New York office, if it is placed in the New York office.

Q. Most of them are, aren't they?

A. Yes.

Q. So there is no incentive particularly in the Richmond [fol. 192] branch office on the part of the local branch man-

ager to retain that business otherwise than mere loyalty to the company, is there?

A. That is right.

Q. And he would naturally not have as much incentive to assist the broker in retaining that business as local resident agents who are receiving part of the commissions as local agents?

A. I am quite certain he would not be called upon by the broker to assist him in holding that business.

Q. But naturally it would be to the interest of the local resident agent who is getting part of the commissions to do everything he could to hold that business, wouldn't it?

A. I would think so.

Q. You spoke of these blanket policies and the fact that the loss experience was different than the experience which would happen if separate policies were written. I wish you would explain how that could possibly be if your company had half a dozen or a dozen policies which covered the identical risks one blanket policy would cover, how there could be any difference in the loss experience or loss ratio?

A. I would like to have that question reread, and my answer to it.

Q. I might have misunderstood you.

A. I can't very well understand how that could be.

Q. That is the way I understood you to testify. If that is not correct, answer the question that you do not think you stated it.

A. I do not think I so testified.

[fol. 193] Q. That is not true, is it?

A. I do not so understand it.

Q. Then, if there is no difference in the loss experience, how can you justify the giving of these big companies a smaller rate than a smaller man would have to pay, or the individual assured who might take out various policies in the company?

A. I believe that Mr. Leslie could testify to that matter better than I can.

Q. I believe you stated that this manual of instructions is distributed by the companies through brokers; is that right?

A. Brokers and agents.

Q. You testified "through brokers", but it is true that they can be just as well distributed through agents?

A. What I should have said is through producers. In all these questions and answers that I referred to brokers I really meant producers, which means brokers or agents.

Q. You say that a broker studies rate changes in various states. Where does he get that information from, as to the rates prevailing in various states?

A. From the manuals and from the instructions issued by the companies.

Q. The company then advises him as to rate changes?

A. That is right.

Q. So that there is no particular study he has to make of it, except to consult the company rate manual, is that right?

A. That is right.

[fol. 194] Q. He has nothing to do with making the rate himself?

A. No, he has not.

Q. Are you familiar with the plant and equipment of the Davenport Insurance Agency, your representative in Virginia?

A. No, I am not.

Q. One of your local resident agents?

A. No. I believe Mr. Adair can testify to that better than I could. He reports through Mr. Adair, I believe, in Richmond.

Q. In other words, your office that you are in is confined almost exclusively to what is produced here in New York?

A. That is right.

Q. And you have no knowledge of what goes on in other states?

A. That is right; only in so far as we have to call upon our local managers in those states to service risks that we may cover in those states.

Q. What sort of service do your branch managers perform there?

A. Branch managers very rarely come into contact with our assureds. We may send policies down to Richmond or send instructions to our assureds to report their claims to our offices. The main claims office is usually in the office of our branch office, which is usually supervised by our branch manager. The same goes for the inspection department, and also for the audit department.

Q. Is the only service that you request your branch office in Virginia to render on a contract that is produced through

your New York office here in New York, the mere countersigning of the policy?

[fol. 195] A. That is right. The other services that are rendered in that territory are performed by the company's salaried employees in the various departments in that territory.

Q. What services do they perform?

A. They administer the claims; they make the inspections; that is part of the routine of our inspection or our engineering department in that territory.

Q. So the company has an engineering department itself, has it?

A. That is correct.

Q. Is that engineering department and the employes in that department, at the service of the local resident agent in Virginia?

A. Yes.

Q. Do the engineers that your company employs go down through Virginia and inspect these various risks, and make such various studies as your company thinks should be made?

A. That is right. They work out of the branch offices.

Q. In other words, you have engineers who actually live in Virginia?

A. That is right.

Q. And these engineers are there at the call of the local resident agent if he desires help?

A. In addition to that, we occasionally send engineers for special jobs which we may think that they are better qualified to do, direct from the New York office. For instance, we have a very large fleet of automobiles insured for one of [fol. 196] the oil companies, and we do not allow any of the local engineering staff to handle that risk; we have it concentrated entirely in one man operating out of the home office engineering department.

Q. What does that engineer try to do when he goes there?

A. He conducts safety meetings; he contacts the various managers, production managers and service managers, of the assured; he interviews drivers and holds safety meetings.

Q. What different functions, if any, do the staffs of these brokers perform of that kind?

A. They would, in certain instances, go further than he

would go. They would supplement the work he does by further detailed studies of those accident reports.

Q. Why is that?

A. Because they believe that that service is necessary.

Q. In other words, as I understand it, the broker makes a study from the standpoint of the interests of the assured to try to reduce his insurance cost?

A. As well as for the interest of the company. As a matter of fact, the interest of the assured and the interest of the company are one. The primary purpose is to reduce the incurred losses, to reduce the accident frequency, so that the cost to the assured ultimately in premium and rate will be reduced, and they are all working towards the same end, the company, the assured, and the broker.

Q. And also the agent?

A. And the agent.

[fol. 197] Q. Then the type of study that will be made by the broker's engineer is exactly the same type that the company's engineer makes, isn't it?

A. That is right.

Q. Do you mean now in your opinion the broker's engineer is more efficient than the company's engineer, or not?

A. No. I believe this: that the broker's engineer has less work allocated to him, and therefore makes a more intensive study of the particular risk than the company's engineer does.

Q. You mean that your company's engineer is overloaded with work, and can not properly perform his duties?

A. No, I do not mean that; but he is not required to do the same job that the broker's engineer does.

Q. Isn't the company more interested than anybody else in not having more losses?

A. I think the assured, the enlightened assured today, is more interested in keeping his losses down than anybody, because if the losses increase, the company can increase its rate, but the assured is the one that finally pays the bill.

Q. Do you know of any case in Virginia in which any engineer of a broker has made any study of any policy or contract that your company has?

A. Yes. I believe that there is an instance of that.

Q. What is it?

A. It is a case of a large tobacco fleet.

Q. I believe you stated, if I understood you correctly, that [fol. 198] the brokers were unable to operate if they only

received one-half of the producer's commissions. Did you state that or not?

A. No; I stated that they would not be able, in my opinion, to operate as effectively as they do now, if they only receive half of the commission; in other words, they would not be able to maintain the organization and the overhead in their organization, to properly service these risks, if their commissions were cut in half. That seems to be obvious.

Q. Is it not also true that if the brokers co-operate in building up a spirit or a policy of associating with themselves and actually working with local resident agents, and of receiving actual assistance from the local resident agents in connection with servicing their contracts, that it would not be necessary for them to maintain such elaborate organizations as you speak of?

A. That might be possible.

Q. You have no actual experience of that?

A. I would have no knowledge of that, no.

Q. You spoke of one broker placing a large premium of over $1,000,000 in one year. What is the general type of that sort of business?

A. It is as a rule national; that is, risks national in scope, covering in many states, such as large fleets of automobiles, workmen's compensation insurance covering a number of different plants, large contracting concerns that have operations in very many states, and theatre chains, and chain store risks of various natures.

[fol. 199] Q. When contacts of that sort are made through a broker in New York, the result is that all of the local agents of your company are given the run-around, so to speak, and eliminated from any participation in those transactions; isn't that true?

A. It is true that they do not share any commission in those transactions.

Q. What do they share in?

A. They do not share in anything, to my knowledge.

Q. Has your company encouraged a practice of this kind among brokers to the detriment of the local agents, or has it discouraged it?

A. I do not believe it has either encouraged or discouraged it. It has just accepted it as a fact, as a condition.

Q. It is the same thing that has grown up due to the concentration of business and activities in a big city like New York and other large cities?

A. That is correct.

Q. I believe you stated that there was a tendency or has been in recent years, to concentrate in New York activities of this size?

A. It has been my experience that there has been a greater tendency in recent years to organize insurance departments in the home offices of large assureds to control the handling of insurance from one focal point, one central point, and to negotiate the placing of insurance nationally through that one department, that home office insurance department.

[fol. 200] Q. If the writing of one of these nationwide policies is so simplified, as you have testified, that the whole matter is almost one transaction with one broker, why is it necessary for an assured to have a large insurance staff in dealing with just one man in one transactions?

A. That is a matter that I think could be better answered by the assured. My personal opinion would be that they should not have such a large insurance staff, yet there are certain of these large assureds that have it.

Q. If they have these large staffs, it would really enable them to make local contacts with local agents throughout the country, would it not?

A. It would be possible, although the staff is located directly in the home office. That is, my experience is that such a staff would be located directly in the home office of the assured.

Q. But members of that staff could travel around the whole country and get firsthand information of local conditions affected by their coverage; isn't that true?

A. They could do that.

Q. As a matter of fact, that is really the most intelligent way to handle it, isn't it, to have firsthand information by actual contact with the events from which losses may be incurred or risks may be decreased, instead of sitting up in an office in New York and handling the whole thing through some broker?

[fol. 201] A. I think the insurance departments of a number of these large assureds do travel, or have representatives who do occasionally travel throughout the country. I have one particular instance, in which I accompanied the insurance manager of a large oil fleet in various localities throughout the South and Southwest at the time we were taking over a large workmen's compensation risk. However, at that time I was operating in co-operation with the

broker and out of the New York office of that particular assured.

Q. Then if these large companies whose business is on a tremendous national volume or scale have the members of their insurance department travel throughout the country and become conversant with local conditions, is there any reason for your notion that these same representatives should not be able to handle the matters through local resident agents in these specific states?

A. The fact is that we are dealing with a condition and not a theory, and they do not do it, to my knowledge.

Q. Is there any reason that you know of, why they should not do it?

A. The only reason I can ascribe to it is that they feel themselves that they can do it more efficiently and effectively by dealing through one local producer.

Q. Mr. Nicholls, I believe in your affidavit you spoke of a lot of contacts that these brokers here make with representatives of the companies who look after the insurance [fol. 202] for their companies—and by "companies", I mean assureds—and associate around with them in luncheon clubs, and probably entertain them at theatre parties and various other things of that kind. I believe that is correct, isn't it?

A. I didn't say anything about theatre parties, that I know of. I do know they entertain them at luncheon clubs. That is a practice in the business.

Q. Isn't it a fact that it may be true—of course, you do not know whether it is or not, but it may be true—that the reason these contracts are concentrated in that manner is on account of these friendships that are built up in that way?

A. I think partially that is true. In other words, the contact is necessary, and of course into that contact will grow certain social relations. On the other hand, the old-fashioned idea that all that a broker ever had to do was to entertain his client, is rapidly being eliminated in this modern competitive age that we are dealing in. Unless the broker today can justify to the entire management of the assured his worth, he will not be considered on that risk, in my personal opinion.

Q. Then your idea is that the broker must not only assiduously cultivate the assured's representative, but must also be competent to attend to the business?

A. To render a real service for the commission that he draws.

Q. I believe you stated that some of the brokers in New York who handle business on a large scale, have offices in [fol. 203] various cities throughout the United States. What cities in particular did you have reference to?

A. Chicago, Philadelphia, Boston, Baltimore; those are the ones that I would name offhand.

Q. Are there any in the South?

A. I assume some throughout the South. But I do know of these particular cities where brokers do have branch offices. It is reasonable to assume that if a broker specializes in a certain line of business that operates down South, he would have branch offices down there.

Q. You do not know of any that have branch offices in the South?

A. Not at the moment, no.

Q. Have any of these New York brokers ever maintained any office in Virginia, that you know of?

A. Not to my knowledge.

Q. You spoke of or mentioned the fact that in your opinion if the compensation of brokers were reduced, that they would place business with Lloyds and other companies unadmitted to Virginia. Is it not a fact that Lloyds does not even have an agent in the United States where suit can be brought against that company in this country?

A. Well, that is the statement that was made to me by a broker when I asked him what might be the result. That is purely a statement from a broker as to what he would do. For instance, they might decide to place it in a mutual company which is admitted in Virginia, and collect their commissions or remuneration from that mutual company [fol. 204] through taking a percentage of the dividend.

Q. These large insurance staffs that are maintained by the assured companies would certainly give some attention to the company that these policies were placed in, would they not?

A. Yes.

Q. And do you think they would be in favor of placing a risk of this kind with Lloyds, which is not susceptible of being sued in the United States——

Q. (Continuing) —assuming that to be a fact?

A. I would not know the reasons why they might.

Q. Do Lloyds have a lower rate of premiums than your company, for instance?

A. I believe they do, in connection with blanket bonds, but I do not know that because I am not a bond man.

Q. As a practical matter your general knowledge of the insurance business necessarily leads you to believe, does it not, that it is an advantage to an assured to be able to bring suit either in the state where the loss occurred, or in the state where the contract is produced, or both, at his election?

A. I would think so.

Q. So that merely in order for a broker to get an extra commission, do you believe that these insurance experts who represent the assured, would consent to placing a contract in any company, mutual or otherwise, that they thought was less advantageous to them than your company, or some company admitted to Virginia and licensed to do business there and be sued there?

[fol. 205] A. That is a matter that I would not be able to determine in advance, until the actual condition existed, but I do know this, that brokers in New York State at the time that the commissions were reduced, were very vociferous in stating that any further reduction in commissions would necessitate them placing large amounts of their business with mutual companies.

Q. Then you do not have a very high opinion of the service rendered by these so-called insurance organizations of the assured, do you?

A. I do not believe that they do as good a job as the particular broker, because if they did, the broker would soon find himself without any necessity for existing.

Q. But you believe that they know the difference between a mutual company and a stock company, don't they?

A. I believe so.

Q. Which type of insurance is the better for these assureds?

A. It is my opinion that the stock company is. That is obvious.

Q. Do you really believe now that these insurance organizations of these companies would, merely in order to give a larger commission to brokers, consent to place that insurance in a mutual company unless they thought they were being equally protected by that company?

A. I know of many instances here in New York where a number of brokers did place a considerable amount of business with those companies.

[fol. 206] Q. It may be in those cases, may it not, that the assureds preferred those companies in the particular contracts involved?

A. That may b , and those assureds may also have insurance departments, so far as I know.

Q. But I do not know that you have answered the particular question I asked you, and that is this: whether or not in cases of these large contracts that you speak of involving premiums running into hundreds of thousands and millions of dollars, placed by assureds who have efficient staffs of insurance experts, these experts would consent to diverting that business into any company which was less advantageous to the interests of the assured?

A. I do not think it would be a question of diverting it to a company that was less advantageous; it would be a question of the assured's insurance department or executive's personal opinion as to whether it was disadvantageous.

Q. I am assuming that in the opinion of these experts, who are supposed to know about the insurance business, that it would be less advantageous; what is your answer upon that assumption?

A. I would say that if it were less advantageous to place it in another company, the insurance department would not permit it.

Q. Then these brokers do not have control over the policies to the extent of placing them in a particular company?

A. It all depends upon the particular risk. In some instances, the broker might not be able to change the company. In another one, he might have sufficient control of his business to place it in any company that he thought was a good company for that particular assured.

[fol. 207] Q. What is the purpose of these assured companies having these insurance organizations, if they are going to leave everything up to the broker?

A. I do know that they have insurance managers, and I do know that they have insurance departments, and I do know that they have manuals and that they read manuals, and that they have a very thorough knowledge of the insurance business. Why they have it is their own affair, I assume. I do not know why.

Q. Can you personally conceive of a person with the information that you say these people have, placing the risks with a mutual company rather than your company, or another company of similar standing?

A. Can I personally conceive of it? I know of it.

Q. You do not know the reason that actuated them?

A. I know they have done it. Against my own advice they have done it. In very many instances against my strong objection they have done it.

Q. Do they consider the mutual companies as strong as the others?

A. I do not know whether they consider them as strong as the others, but the facts are that they have placed business in mutual companies against my advice.

Q. What reason did they give?

A. A matter of cost.

Q. Do the mutual companies sell for less?

A. The mutual companies return a dividend; the stock companies do not.

[fol. 208] Q. Then it is the dividend that is an inducement?

A. That is the primary incentive.

Q. That dividend is a present custom among the mutual companies, isn't it?

A. Yes.

Q. And in the cases where these insurance staffs of the assureds have insisted on a stock company, it was evidently because they believed that that was a better contract, even if it did cost more money; isn't that true?

A. That is right, that the service that they got from the stock company was superior to what they would get from the mutual company, and was not offset by the value of the dividend.

Q. And that is true in spite of all this service that these brokers render, is it?

A. That is right.

Q. In these cases where the contracts are placed with stock companies at greater cost and in spite of greater cost, isn't the reason usually that the person who is looking after the insurance business for the assured, believes that that is the best type of contract for the assured?

A. From the standpoint of the assured, it would be primarily because of the fact that he obtained the broker's services.

A. And had his insurance placed in a company that the broker recommended, having full confidence in the producer's ability to select the proper company.

Q. Then you do not think that the expert insurance staff [fol. 209] maintained by these large companies to look after their insurance which they take for their protection, exercise any great degree of independent judgment of their own?

A. No, I do not.

Q. What do you think is the purpose of these companies going to the expense of maintaining those experts in the insurance business on their staff, if they are not going to exercise any independent judgment in the placing of their risks with the casualty and surety companies?

A. I do not believe I could give you an answer to that. I do know this, that knowledge possessed by the broker is as a rule far superior to the knowledge possessed by the individuals of the insurance department of the assured, and that will be readily admitted by the members of the insurance department of the assured. In other words, they rarely question the judgment of a broker in regard to his selection of a company.

Q. Don't you think they would raise much question about the bona fides of a broker's recommendations if, on account of the fact that the amount of his commissions was being reduced, he would recommend switching into a company not admitted to do business in Virginia or into a mutual company, when he had formerly placed the business in companies that were admitted in Virginia and stock companies?

A. They might.

Q. Is it not a fact that these brokers would jeopardize their own reputation and standing for fair dealing with their [fol. 210] customers, if they embarked upon any campaign of that kind?

A. I can say this, that no broker with any degree of common sense would place an assured's risk in any company that he was not fully confident was able to perform the service and afford the facilities that he expected from that company; and to do so would naturally cause him to lose the business ultimately.

Q. Do you believe that ver[illegible]nany really successful brokers would follow a policy of that kind merely because their compensation was being reduced?

A. They have told me that they would.

Q. Do you believe it?

A. I have evidence that they have in the past.

Q. Then you do not entertain a very high opinion of the ethics of these brokers, do you?

A. I do not think it is a question of the ethics of the brokers. It is a question of their survival.

Q. What knowledge do you have as to whether or not the brokers could survive, personal knowledge, I mean, as distinguished from what is merely told you by the brokers?

A. Well, I know this, that if the present rate of commissions to the brokers that we do business with is cut in half, they would have a very serious problem confronting them in servicing these risks that they now service to the satisfaction of the assureds.

Q. You are eliminating, I believe, from your answer, any consideration of the fact that these brokers might be able to obtain a large amount of help and co-operation and assist-
[fol. 211] ance from local resident agents associated with them, and who receive part of the compensation; isn't that true?

A. That is true.

Q. What large companies that have similar standing to your company are there that are engaged in a similar business in the United States which are not qualified in Virginia or licensed in Virginia?

A. I wouldn't know the names of those companies.

Q. Do you know of any at all?

A. No.

Q. In fact there are none, are there?

A. None that I know of.

Q. It is alleged in the complaint, I believe, that in order to retain the business of these brokers—the insurance companies plaintiffs are required to and have made it a practice of paying to brokers an additional commission over what has been customary to pay heretofore. Do you have any knowledge of that?

A. No, I do not.

Q. If any such practice should be indulged in by any of your competing companies, it would amount merely to a competition between companies as to which is willing to pay brokers the most commission, would it not?

A. It would.

Q. As a matter of fact, any company can now pay a broker 25 per cent commission if they desire, instead of 20 per cent or 10 per cent, whatever the prevailing rate is?

A. Not as members of the National Bureau subscribing [fol. 212] to the acquisition field supervision cost conference. The commissions—and incidentally I believe this is a matter that Mr. Scofield should testify to—are set up in those rules, and the manner in which those rules apply. I believe he can best answer.

Q. If all of the competing companies should adhere to the rules prescribed in Plaintiffs' Exhibits 1 and 2, which have been filed, and under which the broker would receive only half of the ordinary producer's commission, then the only disadvantage which companies qualified in Virginia would be under, would be the effort on the part of the broker to divert the business into a mutual company or a company not qualified in Virginia; is that true?

A. That is correct.

Q. If all of the states should enact similar legislation, this would have the effect, would it not, of eliminating practically all of the competition except Lloyds and mutual companies, in so far as the broker might be able to divert the business from companies of the type of your company; is that true?

A. Yes, I would think so.

Q. I believe you stated that if this additional producer's commission were paid to brokers, it would have the effect of increasing the premium rate to the assured; is that correct?

A. If the acquisition cost is increased to the companies, it must, of necessity, be increased to the assured.

Q. If some of these companies are willing to engage in that practice of paying to the broker the equivalent of that half of the commission which must be retained by the Virginia resident agents then it would follow, would it not, that [fol. 213] those particular companies would have to increase their premium rates to the assured on account of the increased acquisition cost to which you have referred?

A. Yes.

Q. If that is true, I believe you also stated that a company which did have to increase its rates would be unable to compete with a company charging lower rates. That is correct, isn't it?

A. That is correct.

Q. Therefore, the net result of a practice of that kind would be that the companies following it would eventually be practically put out of business?

A. I think the entire practice would be detrimental to the business. I believe that unless this matter were handled on a uniform basis, it would create chaos in a business which we are now trying to straighten out. As a matter of fact, on this very subject I believe that if the producers and the companies could get together on a uniform law affecting this thing, that much of this trouble that this is about to create, could be eliminated, and it seems unfortunate that that has not been done before. That is my private opinion.

Q. You spoke of these blanket policies covering fleets of oil trucks, and similar risks. Is there any reason why a separate fleet policy should not be issued in each state covering the fleet in that state?

A. No, except for the matter of convenience of insuring it under one blanket contract. The assureds would natur- [fol. 214] ally prefer to have their coverage under one contract than in 48 different contracts, assuming they were operating in 48 states.

It is true that we do file the underlying policy with the Rating Boards and Industrial Commissions, whenever it is necessary to make a filing, but that is something the assured is not burdened with; in other words, we do not hand him 48 contracts for delivery; we hand him one contract with the schedules set up by states.

Q. What becomes of these underlying contracts?

A. The copies of those underlying contracts are filed with the particular department.

Q. What department? Department of what?

A. It might be the Rating Board; it might be the Industrial Commission; in other words; the New York Rating Board, for instance, if we wrote a blanket policy covering the State of New York as well as other states, the Compensation Insurance Rating Board in New York would only be interested in that part of the contract covering in the State of New York; so, therefore, we file a daily report extracting from the policy that particular portion of the coverage in the State of New York, and in that we cite the classifications, the rate, and so on, and the locations that apply to the State of New York.

Q. I suppose different states have different laws prescribing different forms of policies?

A. Where they do have that, of course we have to file a separate policy for that particular state. In other words, where the particular state requires an individual policy

[fol. 215] contract on compensation, for instance, say Pennsylvania, we issue a separate policy for the State of Pennsylvania. For other states we merely issue under compensation policies, the law endorsements affecting those particular states, and use the universal workmen's compensation policy accepted for those particular states. I believe Massachusetts also calls for a special form of compensation policy.

Q. The only inconvenience you can think of, then, that would be attendant upon having separate policies, is a little additional clerical work?

A. Yes, and a study of the changes that might be made in those policies year by year.

Q. You also spoke of some sort of a policy that was to cover any type of activity that the company might engage in in any state. This, I believe, is a type of workmen's compensation policy.

A. The blanket workmen's compensation policy.

[fol. 216] Q. And if a company that is assured under one of those policies goes into a state and undertakes the construction of a building or something of that kind in a state, I believe that policy technically covers it. Is that right?

A. In that particular case it would have to be a state in which we had entered that particular assured through the attachment to the policy of a law endorsement, and by the filing of a copy of that contract with the particular Industrial Commission; but that would enable him to do any operation in that state that was provided under the policy contract.

Q. Would the assured there have to give you notice that he was engaging in this activity in that state?

A. He would at the outset tell us the states in which he expected to do work, and any work he did in those states would be automatically covered in that policy. If he failed to notify us that he was going to do work in another particular state under this workmen's compensation policy, it would be a very serious thing for us to have him go into that state and do any work and not have so notified us.

Q. So you require notification, do you?

A. We endeavor to get notification in this particular case where he goes into a state not listed on the policy contract, but the policy contract itself covers for any coverage that may exist under any law in the United States or Canada. That is part of the workmen's compensation form.

Q. If he goes into a state of that kind and engages in an [fol. 217] activity, even though you know nothing about it, if a loss develops you think you are liable under that policy?

A. Yes; but the danger is that he subjects himself to a penalty in engaging in an operation under a policy with a company that has not filed.

Q. Suppose he starts a new activity in a state where he has already filed a copy of the policy with the Industrial Commission?

A. That is covered automatically.

Q. But you do not know anything about it. He is not required to give you any notice?

A. No. We may draw our policy to the effect that he will have to notify us, in other words, we may say in our contract "This policy covers anywhere in the State of New York or in the States of" listing a number of states.

Q. But those policies require notice, or they do not; that is what I am trying to get at.

A. In certain cases we would insist upon his giving us notice. For instance, if we were writing a particular type of policy we felt we would not give the particular notice, we would put an endorsement on the policy saying that the assured would have to give us ten days' notice of a particular job he was deciding to undertake. In other cases we would not. It all depends upon the particular individual risk.

Q. If you had a contract with a company not requiring that particular notice, how do you find out what premium he has to pay?

A. We make an audit of his books.

[fol. 218] Q. You mean you have to go to the expense of auditing that man's books?

A. Certainly. That is the way a premium is developed under a workmen's compensation policy. We do not have any other way of arriving at the premium.

Q. Does your company audit the books of every assured?

A. Every assured that we write for workmen's compensation and public liability insurance, because that is how our premium is arrived at.

Q. Does the company keep separate records of each of these jobs so that you can determine the rate on each job?

A. Does the assured?

Q. Yes.

A. Yes, they keep records of the job, and they classify

their labor according to the manual classification involved in the particular risk.

Q. Suppose a job is completed in the state and there is no loss incurred, and the company does not say anything to you about it and does not show you any records of that job, how would you get any premium on that?

A. You are touching on one of the very serious problems in our business at this minute, and there has been a considerable loss of premium volume because of that. However, the companies endeavor to maintain organizations so that they will pick up information of that character; and I can say this to you, that if an assured ever did that once the insurance carrier would immediately cancel his contract. [fol. 219] However, that is a very serious problem which has existed many years in connection with the payroll auditing in the workmen's compensation insurance business.

Q. Isn't it true that having a local agent through whom this business is handled, would be of great help in the company being advised of activities of that kind?

A. I do not think so.

Q. You mean the local agent would not know about it?

A. I do not think so.

Q. In his home town?

A. If it were going on in his home town, yes, but if it were going on in some other town I do not see how he would have knowledge of it.

Q. A man living in Virginia is generally conversant with the activities in the state.

A. In the entire state.

Q. Generally speaking.

A. I don't know.

Q. You don't know about that?

A. I know as a resident of New York City I would not know what was going on in Newark or Jersey City, and that is right across the river.

[fol. 220] Q. What are the particular services a broker renders after a contract is made?

A. He advises the assured in regard to various phases of his operations from the safety standpoint. He assists the assured in regard to the handling of his claims. He acts in various capacities as an adviser for the various insurance needs that may come up during the course of the year, new contracts that he may assume and the insurance problems

that are created by those contracts, and the effects it may have on the particular insurance he is handling.

Q. Does an agent render substantially the same service as a broker?

A. When I say broker, I mean broker in the capacity of a producer; and of course an agent is in the same capacity.

Q. They both occupy more or less of a mediating attitude between the company and the assured?

A. That is true.

Q. And their duties are to see that the contract is fairly and justly performed on both sides; is that right?

A. That is right.

Q. You spoke of some brokers, probably agents also, who specialize on a particular type of coverage. If one of these large companies which desires to be protected under a contract of surety or casualty has different types of contracts that it desires, would it likely place all of those with this specializing broker or divided among different brokers who [fol. 221] specialize in those particular types?

A. It might be placed in the position of having to go to a particular broker, because of his specialized knowledge in one particular class of business. To give an example of that, there were at one time and probably are today, although I have not any direct contact with that form of insurance, certain agents throughout the country who were specializing in a particular form of liability insurance known as amusement park liability. That business was limited to practically three or four large agents, who wrote practically all of that business through one company.

Q. My question was whether or not the assured would very likely place all of his contracts with one of these specialized brokers or just the particular contract that is covered by that broker's activities.

A. It would all depend upon the particular broker or agent. Naturally, if the broker or agent were able to effect a form of coverage such as amusement park liability, that would be hard to place elsewhere, he would endeavor, if possible, to obtain the other casualty lines and possibly the fire insurance for that particular assured. Whether the assured would agree to give him all the rest of his business would depend upon the necessity he had for the service of that particular agent or broker.

Q. These agents, that is, agents that occupy the same status of what is termed in Virginia a resident agent under

[fol. 222] the licensing law of that state, do act as brokers frequently if the companies they represent do not happen to carry the type of contract that their customer wants, don't they?

A. I would assume so.

Q. And they are in a position, either by making contracts with their own companies or procuring them through other companies, to render any service in the way of procuring a contract that any broker would render. Is that correct?

A. By and large that would be so, except in specialized forms of insurance such as I have mentioned. Malpractice insurance is usually a specialized form of insurance controlled by one or two agents or brokers.

Q. Don't you think that the agent who represented a company that issued contracts of that type in Virginia would write through another agent that brought the business to him, and be associated together in that transaction?

A. He might.

Q. Wouldn't it be helpful to your company if New York brokers would associate with them and enlist the help and service of local resident agents in Virginia or other states?

A. That is a question that I do not believe I would know the answer to. I do believe it might be objected to by the broker or agent, for instance in Virginia, if he had to have his assured brought into contact with say three or four other agents in other states, simply because that assured had operations in other states, and I believe the agent in [fol. 223] Virginia would have the same objection to that as the broker in New York. That is my own personal opinion.

Q. What objection could the agent of Virginia have to being associated with a contact that he otherwise would be eliminated from?

A. If he were the producer of a contract in Virginia and had to have his assured contacting four or five other agents in other states, I believe both he and the assured would have a serious objection to that.

Q. You mean an agent who writes coverage outside the State of Virginia?

A. That is correct.

Q. He would not want to have any associated with him to the extent of endangering loss of his business; is that so?

A. Yes. I do not believe it makes much difference to the

carrying company except that they would have to do business through three representatives instead of one.

Q. They would have a local man, though, who would be on the job when the event happens that results in a loss?

A. They would have that man as a salaried employe in their Claim Department. He would not be an agent.

Q. But does not an agent frequently help to iron out difficulties and disputes between the company and the assured?

A. Occasionally. I am assuming, however, that you are referring to cases where the accident arises and the claim is to be adjusted under the terms of the contract, and there is no dispute between the assured and the carrier. In that event the agent would not be brought into the picture at all, [fol. 224] but the salaried claim man would handle it right to conclusion.

Q. Does not the agent usually take it up with your adjuster?

A. Not as a rule. For instance, in the handling of these large accounts we notify the assured of a list of all our claim offices, and when an accident arises, instead of the accident report being sent to the agent, the accident report is sent direct to the salaried claim man in that particular locality.

Q. That is, the company does that?

A. The assured does that. The assured sends the notice of the accident to our claim office, because otherwise it would create endless delay, if, for instance, the agents were located in Virginia and the accident happened in Idaho.

Q. I am talking about the accident happening in Virginia.

A. If the accident happened in Virginia and the agents were located in New York State.

Q. I am talking about a Virginia agent who handles Virginia business. You have a lot of agents in Virginia now?

A. Yes.

Q. Don't they render any help to your company at all?

A. The help that an agent renders is incalculable, and the good will of an agent is the most valuable asset our company has. I think I am being placed in a position here of criticizing the lifeblood of our business, which is not my intention. I have a high regard for the agents.

Q. Don't the agents render service after the contract is written?

[fol. 225] A. Of course they do; that is what they are there for. They would not be good agents either to the company or to the assured if they did not.

Q. You spoke yesterday of the mutual companies and the type of contract they offer as compared with the contract of the companies like you represent. I wish you would state what you consider to be the principal advantages of your contract over the mutual contract.

A. Well, the contract of the stock company does not contain the assessment feature that a mutual contract does, and in most cases the mutual contract is negotiated direct with the assured without the services of the broker or agent, which we consider are a vital necessity to the particular assured.

Q. Are there any different provisions in the contract itself?

A. Except for the assessment feature in the mutual contract, the policies are pretty much similar. As a matter of fact, in most states, in compensation and automobile insurance the forms are pretty well prescribed by the authorities.

Q. In Virginia there is a difference between the automobile liability policy of a mutual company and that of a stock company, isn't there?

A. Other than the possibility of assessment under the mutual policy, I can not understand how there could be any material difference, because they would both have to provide similar protection.

Q. There are conditions, like requiring driving licenses [fol. 226] and things of that kind, that are contained in the mutual policies that are not contained in the others; is that correct?

A. Not to my knowledge.

Q. You are not familiar with that?

A. Not with the particular situation in Virginia; no.

Q. Does your branch of the work here in New York bring you into contact with adjusting of losses in Virginia under any contracts except what come through this branch office, or which originate in New York?

A. No; only on such contracts originating in New York.

Q. You spoke yesterday of these blanket policies where you issue to the assured one policy covering risks in a number of different states. Isn't it a fact that there are

underlying policies which are issued separately for each state?

A. That is correct.

Q. Are these underlying policies countersigned by local agents in each state?

A. They are all executed in accordance with the law of the various states. Where the policy must be countersigned in a particular state, naturally the underlying policy is sent to that state for countersignature.

Q. So that the real contract that you make with the assured consists of a blanket policy and a whole lot of underlying policies?

A. That is correct.

[fol. 227] Redirect examination.

By Mr. Christian:

Q. Yesterday, you said a general agent only represents one company, as a rule. Do you mean by that he only represents one casualty and surety company, or do you mean he usually represents only a casualty and surety company but does not represent other kinds of companies?

A. My experience with the larger general agents is that they only represent one casualty and surety company, and other fire companies.

Q. Ordinarily these casualty and surety general agents do not go in for life insurance, do they?

A. I think they do.

Q. So they probably represent a life insurance company too?

A. That is correct.

Q. You said yesterday that the service policy of a general agent would be established by him. It would be well if we could have some definition, I think, of what you mean by a service policy. Is that his attitude towards the public, or the little house organ he might get out to his customers periodically, or is it the extent to which he is gracious in his manner toward them, or what?

A. I am talking about the service policy of the agent to the assured, in differentiation of the underwriting policy of the agent to his company. The company, to a large extent, [fol. 228] controls the underwriting policy, what risks it will or will not accept, whereas he himself determines how

often he shall call on his assureds and what services he will render to those assureds.

Q. And that is the matter of salesmanship, a man selling himself?

A. That is correct.

Q. Down in your position as a branch officer, does the company determine your service policy, in the sense in which you use the term, or is your service policy there a matter of your personality?

A. My service policy is largely determined by the instructions that I get from my superior, the resident manager.

Q. Let us take the branch manager, then. Does he determine the service policy of his branch office? For instance, take Mr. MacNeil, in Richmond, or take the branch manager of whom you are the assistant, does the service policy vary in those different offices with the personality of the branch manager?

A. It might to a certain extent, but by and large it will be governed by the directions that he operates under from the company.

Q. And when you refer to service policy, exactly what things come under that terminology? I asked you whether he would get out a house organ to his customers, or whether he would call on them once a week or once a month, or just before an expiration date, and I think you said that was a part of it.

A. That is a part of it.

[fol. 229] Q. And what would be some other things: whether to send them Christmas presents or Christmas cards—would that be part of it?

A. Not that I would give consideration, no. It would be primarily the interest in the assured's business in regard to his loss ratio and the safety activities that his assured would take under his urging, and advice that he might give him to administer his affairs in such a way that he would obtain the best form of insurance.

Q. Perhaps also in an economic way. Of course, a man with a good service policy, then, would be lowering the cost of insurance all the time as far as his acts had an impact on the business, wouldn't he?

A. He would be a valuable asset to the company, the assured, and the community.

Q. In a selfish way, what would be the immediate effect of giving that service in a way acceptable to the assured?

A. From a selfish standpoint it would serve to make him more valuable to his assured, and that would have the effect of continuing him as the broker or agent on the risk when it was up for renewal.

Q. And it would have the effect, if his loyalty was to your company, of your company getting the renewal instead of another company?

A. That is correct.

Q. In answer to a question of Mr. Staples as to whether if local agents in Virginia should in future receive substantial parts of the producer's commissions, they would be [fol. 230] called on to furnish service to assureds or to New York producers of the business, I am not certain what you said. Do you know of any service for which there would be occasion to call on them in such a case?

A. I do not know of any now, because I do not think the occasion has ever arisen.

Q. But if the New York producer had to divide his commissions 50-50 with the Virginia agent, you think it is possible, as I understand, that in order to lessen the burden of that on himself, he might devise means to get something besides a countersignature out of the local agent?

A. Yes. He might conceivably call on such local agent to render service.

Q. I think you also said in answer to a question by Mr. Staples based on a hypothetical case, that if a countersigner that has to countersign a policy wanted to raise some question as to its contents, the proper course would be for him to communicate with the producer. I ask you whether in an ordinary case, in order to do that he would not have to communicate with him through the party who requested the countersignature to be furnished, or would he be able on the information before him to identify the particular party to communicate with?

A. He could do it either way. He might communicate with the home office who had given him the list of the countersignatures, that is, of persons to call upon, who would call upon him for countersignatures, or he might call upon the party direct that sent the policy for countersignature [fol. 231] if he knew who that was.

Q. Sometimes he would not know who that was?

A. In that event he would refer to the home office individual who gave him the list.

Q. And ask that party to communicate with him in this case?

A. That is correct.

Q. It often happens, however, that when business comes through a general agency, that the general agency does not even want the home office to know who was the true producer; isn't that so?

A. That is so, in certain jurisdictions where the general agent objects to giving the company the names of the individual producers who gave him the business.

Q. In other words, some general agents consider that the exact nature of the business of the subagents reporting to them, as well as the exact sources of the business they get from brokers, are their business secrets?

A. They consider that is their personal property.

Q. That knowledge?

A. Yes.

Q. I think you used the term that agents own the business, or something of that sort. What you have reference to there, I believe, includes the records of the dates of expiration of their policies, for one thing, doesn't it?

A. That is right.

Q. And any information they have as to the coverage needs of particular assureds?

[fol. 232] A. That is correct.

Q. And sources of their business?

A. That is correct.

Q. Would you think it would be correct in a legal sense if I made a contract with the F. & C. Company through a particular agent, to say that nobody except me has the right to place the renewal of that contract?

A. I would say that that is a matter which in my personal opinion, should be considered the property of the agent.

Q. But I mean to say isn't it my property if I am the assured, where I place the renewal business?

A. Yes, that is so, but my point there is that there is a relationship between the company and the agent, and if the agent leaves one company and goes to another, it is the practice in the business for the company who had his business before, not to endeavor to control that business and take it away from that particular agent simply because he goes to another company.

Q. In other words, because I as your agent, reach the parting of the ways with you, you do not try to destroy me by making a drive on my customers?

A. That is right.

Q. And that is the sense in which you mean of the companies regarding the business as going to the agent?

A. Yes.

Q. Mr. Nicholls, in this suppositious case that we were talking about where a countersigner would get a substantial part of the producer's commissions on contracts which [fol. 233] were countersigned at the request of the producers, would there ordinarily be satisfactory uniformity of excellence in the countersigners so that the true producer in discharging his duty to the assured, could feel that he could uniformly rely on those local people in matters, or would you expect to find variations among those various countersigners, so that in some cases he could not allow him to be his deputy or delegate, and in other cases he could?

A. I think that would all depend upon the particular circumstances of the case, and the type of contract he was issuing, and the particular organization of the countersigning agent or broker.

Q. It would vary in different localities?

A. It would vary in different localities, and on the calibre of the individual.

Q. And even though the individuals might not have a variation in calibre, there might be a variation in extent of the knowledge of the producer as to that calibre in different localities which would alter his judgment in saying whom he could depend on.

A. That would be true.

Q. Without reference to either this Virginia resident agency law or any other resident agency law, is it practicable for these assureds whose business is now produced in New York but covers in Virginia and other states, assuming they want to do it and think it is in their best interests to do it, to create this very condition that this law attempts to create? [fol. 234] In other words, could an assured split his business and place half of it locally if he wanted to?

A. He could do that. It would seem to me that a multiplicity of companies and agents in the casualty business, for instance, would not tend to be helpful to the assured. In other words, if he could concentrate his business in one

company through one agent or broker, it would seem to me preferable.

Q. I mean if there is anything in the present situation that these assureds ought to have and are not getting?

A. I do not believe so.

Q. I say that if there should be they could get it without having the Virginia resident agency law, by just placing some of the business through the Virginia agents; isn't that so?

A. They could do it now. That is true.

Q. About this National Conference; that is a voluntary organization, is it not?

A. That is true.

Q. And if a company wanted to get out of it and pay what acquisition costs it wanted, it could?

A. Yes. It could resign from the Conference.

Q. In answer to one of Mr. Staples' questions, I think you left the impression that if a particular company paid higher acquisition fees, of necessity that company would have to increase its premium rates? I ask you, isn't that situation susceptible of being otherwise treated than by increase of premium rates, by adding more selective underwriting or adopting a different and less liberal claim settle- [fol. 235] ment policy, or lowering the percentage of other factors going into the premium?

A. It could result in all those things, and could cause most of those conditions.

Q. But I mean you could avoid raising the premium if you would do more selective underwriting?

A. Or you could avoid raising the premium if you cut down on your service facilities to your assureds.

Q. Or if you could cut down and operate very much more economically the administrative part of your business?

A. That is right.

Q. Or if you could make more money out of the investment part of your business to offset the loss of money in your underwriting.

A. It could be accomplished in many other ways.

Q. So it is not the result of paying more commissions on the premiums that you got; is that right?

A. That is right.

Q. It would have been a more accurate answer, then, to say that paying larger commissions or having larger costs

of any sort would have a tendency to cause the premium rate to increase?

A. I can answer that by saying there are just so many pennies in the premium dollar, and if you take any out of it somebody has got to pay for them.

Q. About these insurance departments which you and Mr. Staples discussed yesterday, the impression was left in my mind from that discussion that perhaps the placing [fol. 236] of contracts was the principal function of those insurance departments that the assureds themselves maintained, and that if they were just going to place one or two or three or four blanket contracts with a broker, they could close up their desks and go to Florida for the winter. That is not the impression that you wish to leave?

A. I am surprised that impression was created. Those insurance departments are kept busy daily, otherwise they would not be maintained.

Q. And they are following up claims and adjustments, and this and that, all the time?

A. They are following up a number of duties that coincide with the duties of any other department in the company.

Q. What I am trying to get at is, would those duties be there to be done regardless of whether they placed the business through one broker or agent in New York or scattered it around the country.

A. Yes, those duties would still be there to be done.

Q. You would say that men of leading reputation in their knowledge of insurance are generally to be found in those salaried positions in those insurance departments of assureds, or are they found, like the leading lawyers, leading doctors, and leading engineers, running their own organizations with their own business?

A. I would say they are usually found among the agents and brokers running their own business.

Q. Speaking of a general agent occupying, in Mr. Staples' [fol. 237] words, a mediating attitude between the company and the assured, would that description also apply to the attitude of a branch manager between the company and the assured?

A. Not to the same extent.

Q. You do on occasion, yourself and other branch managers, mediate?

A. Yes; we do frequently come in contact with the assureds.

Don't you also frequently have brokers here call you up and ask you sometimes to make payments plainly not covered by the contract, and just put it on the matter of retaining their good will, and don't you come up here and try to get the company to pay it?

A. Yes, we do that for the sake of getting the good will of the agents or the broker.

Q. And there you distinctly act as mediator?

A. Yes.

Q. Didn't you tell me that in one case an insect bit a party on the arm and it was not covered, and you got payment for $175?

A. That is right.

Q. And that was on a more or less serious representation of the broker that that was something you had to do?

A. That was a question that the broker was confronted with as a service to the assured.

Q. And as to whether your Virginia agents render your company service after a contract is written you said "Yes, they did, and they would not be good agents if they did [fol. 238] not." Were you referring there to countersigning agents or producing agents in Virginia?

A. Producing agents.

Q. When you use that term in that connection, do you mean an agent that has contact with the assured and has the good will of the assured and with whom the assured wants to do business, or do you mean some stranger who has no contact with the assured except such contacts as may arise from having countersigned the assured's contract?

A. I mean the producing agent who has direct contact with the assured, and not the agent who merely countersigns the contract.

Q. About these underlying policies which are issued in connection with blanket policies on a nationwide coverage, there would only be a very limited number of states where underlying policies would have to be issued at all, wouldn't there?

A. That is correct.

Q. In other words, it depends upon whether the statute in the state that is applicable to that particular branch of insurance requires underlying policies?

A. It depends upon the requirements in that particular state as to the filings of that particular class of insurance.

Q. And the laws of some of the states would exclude accident and health from that group?

A. That is right.

Q. And include other lines, include fire and so on?

[fol. 239] Q. In the State of New York, for instance, it requires filing with the New York Rating Board a copy of the workmen's compensation policy, whereas it does not require it in the case of the public liability policy.

Recross examination.

By Mr. Staples:

Q. I believe you stated on redirect examination that there had never been any occasion yet for a New York broker to request any local service from a resident agent in Virginia, so far as you know. Is it not true that up to this time the New York broker has not yielded any portion of his commissions to any resident agent in Virginia which would entitle him to call upon that local resident Virginia agent for any service?

A. That is correct.

Q. With reference to the question of the ownership by a local resident agent who is compensated by commissions of the business produced and built up by him, the question was raised as to whether your company regards that business as belonging to the agent, or whether the company would be free to undertake to secure that business from the agent, in the event the agent leaves your company and goes with another competing company. I ask you whether under circumstances of that kind, your company would give to your new agent, new resident agent, the expiration dates of policies in your company which had been procured by the former agent who had left your service?

A. No.

[fol. 240] Q. Mr. Christian asked you about a case in which a broker induced your company to pay a man $175. for an insect bite, when the policy did not cover that case. You stated that this was brought about by the action of the broker, did you not?

A. That is correct.

Q. Then it is the broker who acted as a mediator between the assured and your company, and the broker is the man who really accomplished it, isn't that correct?

A. The broker took it up with me, and I took it up with our Claim Department, and between us we accomplished the result.

Q. But so far as the assured was concerned, the only man who was contacted was the broker?

A. That is right.

Q. And the broker occupied a similar status to that of the resident agent in Virginia?

A. That is right.

Q. Your branch office in New York is occupied exclusively in the business of producing contracts through brokers and resident agents in New York, isn't it?

A. We have on occasion had business sent in to us through brokers in other states, through another agent in New York.

Q. A large part of your business which you originate through your office consists of coverage in states other than New York, does it not?

A. That is correct. It does.

Q. And naturally, then, you would be disposed to look with favor upon the practice of having this out-of-state [fol. 241] coverage originate in New York through your office, wouldn't you?

A. That is right.

Redirect examination.

By Mr. Christian:

Q. I believe you said that in the insect bite case the broker there occupied the same status as a resident agent in Virginia. Do you mean in respect of the incident that he was a producer just like a resident agent in Virginia would be a producer if he produced the business; or do you mean that the broker has the same relation within your company as the resident agent in Virginia?

A. The broker would have the same relation in that particular case as a producing agent in Virginia, whether he were in Virginia or in New York.

Q. If he had been a producer?

A. That is right.

[fol. 242] JOHN J. MCNAMARA, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. Will you please state your present business connection and your duties in that position?

A. Assistant Superintendent of Agencies.

Q. What company?

A. The Fidelity & Casualty Company.

Q. How long have you been in that position?

A. Twelve years.

Q. Is there any variation in the contents of this form, Plaintiffs' Exhibit No. 3, as a rule when the agent is to be a general agent, from what it is or would be when he is to be a local or regional agent?

A. No difference, except as to commission rates. We use the same standard form. We do not have any special forms.

Q. What arrangement or instrument, if any, is the matter covered whereby the general agent is to assist and supervise subagents working under him? Is that a mere matter of general understanding, or would you say that no such understanding exists, or is there a written contract on the subject?

A. I should say it is a matter of general understanding.

Q. Is it business custom too, in the business?

A. Yes.

[fol. 243] Because if a man is a general agent he generally has subproducers.

Q. Does he always get an overriding commission on what his subproducers produce?

A. He would be expected to, under the acquisition cost rules.

Q. He does not always?

A. No. He should be or would be expected to do it.

Q. What form of agreement is made with the branch manager who contracts to perform the duties as such for the company?

A. No written agreement at all.

Q. The verbal agreement would, I imagine, stipulate his salary, would it not?

A. It does.

Q. Does it define his duties?

A. We have what is known as branch office rules and regulations, and they cover the operation of the branch offices.

Q. And they are uniform and are varied from time to time as experience develops and need for change arises?

A. Sure.

Mr. Christian: It is stipulated that in 1937 The Fidelity & Casualty Company had eighty-seven persons licensed as agents in Virginia, of whom one was its resident branch manager, Mr. Lewis C. Adair, one was a salaried special agent under Mr. Adair, giving all of his time to the company, one was such an agent giving fifty-five per cent, of his time to the company, and another was such an agent giving fifty per cent, of his time to the company. The others were commission agents, four of which were general agents and seventy-nine of which were other agents.

There was one of the general agents in each of Richmond, Norfolk, Roanoke and Suffolk; and in Richmond there were eighteen of the other agents, in Norfolk five; in Lynchburg, four; and in other localities, *fifty-two*.

The company had substantially the same agency set-up then as now, except that under the 1938 Virginia Act the salaried ones are registered and licensed as special agents, and company representatives, and the remaining eighty-three as resident agents.

Mr. Staples: That is agreeable.

Witness identified as nationally in current use by his company, the following forms:

Automatic Schedule Fidelity Bond—Ex. 4; Glass Policy—Ex. 5; National Standard Automobile Liability Policy—Ex. 6; Maximum Benefit Accident Policy—Ex. 7.

70640

BRANCH OFFICE COPY

The Fidelity and Casualty Company of New York

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE WHERE THERE IS A RESIDENT AGENCY LAW SO REQUIRING

COUNTERSIGNING ENDORSEMENT

Date: 19

is hereby understood and agreed that the schedule of this policy contains a premium of $ .....for insurance in the State of.....

This endorsement forms a part of Policy No.

Issued to

Countersigned by

B M Culver
President

.....
Authorized Representative.

BRANCH OFFICE GENERAL AGENT ..... AGENT OR BROKER .....

(ADDRESS)

L630B. 40M. ★ 78001-88000 (39034842)

243-a

129

PLAINTIFFS' EXHIBIT 4

No. 1767884

The Fidelity and Casualty Company of New York

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, hereinafter called the Company, does hereby agree to indemnify "those designated as insured. in joint insured rider at ached he eto as a part hereof."

of Harrison, New , hereinafter called the Employer, against the loss of any money or other personal property (including that for which the Employer is responsible) through any dishonest, fraudulent, or criminal act or omission of any Employee named in or added to the schedule hereto attached as hereinafter provided, whether committed or omitted directly or in connivance with others, while such Employee holds any position anywhere in the service of the Employer; committed or omitted, if such Employee be named in said schedule, after noon of the 1st day of March, 19 28, or if added thereto, after noon of the effective date of such addition, and discovered by the Employer before the expiration of three (3) years from the termination of such suretyship.

The foregoing agreement is subject to the following conditions:

1. The total liability of the Company on account of any one Employee shall in no event exceed the highest figure at any time in effect in the said schedule as to such Employee. The Employer may at any time remove from the schedule the name of any Employee or add thereto the name of any Employee, or increase or decrease the amount of security in the case of any Employee, by giving written notice of such change to the Company; but, except as hereinafter provided, the Company shall not be bound as to such addition or increase until the Employer shall have received the Company's written acknowledgment thereof. If the Employer takes into his service, transfers, or promotes a person assigned, temporarily or otherwise, to a position of the same name and scope as one filled by an Employee already covered under this bond, the Employer shall be deemed within the terms of this bond to have added to the schedule the name of such Employee as of the date of such employment, transfer, or promotion, and to have received from the Company a written acknowledgment of notice of such addition; provided that the Company's liability for any Employee so constructively added shall not exceed the highest amount for which the position occupied by such Employee is already named in the schedule, and provided that the Company's liability as to such Employee shall terminate at the end of two (2) months from the effective date of such constructive addition unless such addition shall have been made actual by written notice and acknowledgment as provided above.

2. Upon the discovery by the Employer of any dishonest, fraudulent, or criminal act or omission on the part of any Employee covered hereunder, the Employer shall give written notice thereof to the Company at its home office as soon as practicable after such discovery. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Company at its home office within three (3) months after such discovery, and such loss shall be verified and paid by the Company within forty (40) days thereafter.

3. If the Employer or the Company shall make any recovery (excluding recoveries from other insurance and reinsurance) on account of any loss hereunder, such recovery shall first be applied to reimburse the Employer fully as to such loss; and the remainder (if any) of any such recovery shall then be applied toward the reduction of the Company's loss.

hereby agree to indemnify "those designated as insured in Joint Insured Rider attached hereto as a part hereof."

of Harrison, N.J., hereinafter called the Employer, against the loss of any money or other personal property (including that for which the Employer is responsible) through any dishonest, fraudulent, or criminal act or omission of any Employee named in or added to the schedule hereto attached as hereinafter provided, whether committed or omitted directly or in connivance with others, while such Employee holds any position anywhere in the service of the Employer; committed or omitted, if such Employee be named in said schedule, after noon of the 1st day of March, 19 38, or if added thereto, after noon of the effective date of such addition, and discovered by the Employer before the expiration of three (3) years from the termination of such suretyship.

The foregoing agreement is subject to the following conditions:

1. The total liability of the Company on account of any one Employee shall in no event exceed the highest figure at any time in effect in the said schedule as to such Employee. The Employer may at any time remove from the schedule the name of any Employee or add thereto the name of any Employee, or increase or decrease the amount of security in the case of any Employee, by giving written notice of such change to the Company; but, except as hereinafter provided, the Company shall not be bound as to such addition or increase until the Employer shall have received the Company's written acknowledgment thereof. If the Employer takes into his service, transfers, or promotes a person assigned, temporarily or otherwise, to a position of the same name and scope as one filled by an Employee already covered under this bond, the Employer shall be deemed within the terms of this bond to have added to the schedule the name of such Employee as of the date of such employment, transfer, or promotion, and to have received from the Company a written acknowledgment of notice of such addition; provided that the Company's liability for any Employee so constructively added shall not exceed the highest amount for which the position occupied by such Employee is already named in the schedule, and provided that the Company's liability as to such Employee shall terminate at the end of two (2) months from the effective date of such constructive addition unless such addition shall have been made actual by written notice and acknowledgment as provided above.

2. Upon the discovery by the Employer of any dishonest, fraudulent, or criminal act or omission on the part of any Employee covered hereunder, the Employer shall give written notice thereof to the Company at its home office as soon as practicable after such discovery. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Company at its home office within three (3) months after such discovery, and such loss shall be verified and paid by the Company within forty (40) days thereafter.

3. If the Employer or the Company shall make any recovery (excluding recoveries from other insurance and reinsurance) on account of any loss hereunder, such recovery shall first be applied to reimburse the Employer fully as to such loss; and the remainder (if any) of any such recovery shall then be applied toward the reduction of the Company's loss.

4. This bond shall terminate:

(a) As to any Employee upon discovery by the Employer of any dishonest act on the part of the Employee.

(b) As to any Employee upon the death or retirement of the Employee from the service of the Employer.

(c) As to any or all of the Employees thirty days after written notice has been served by the Company upon the Employer or sent by registered mail to the Employer at the address hereinbefore stated.

(d) As to any or all of the Employees by the Employer giving written notice to the Company.

The Company shall refund the pro rata unearned premium applicable to any suretyship terminated as herein provided if no claim has been paid thereunder.

IN WITNESS WHEREOF, the Company has caused this bond to be signed by its president and secretary; but this bond shall not be binding upon the Company unless it shall be countersigned by a duly authorized representative of the Company.

H. G. Remington
Secretary

B M Culver
President

Countersigned by _____
Attorney

Bond 1738, 4M
(35071079)

(AUTOMATIC SCHEDULE FIDELITY BOND)

243a-1

OFFICERS

ERNEST STURM, Chairman of the Board

BERNARD M. CULVER, President

FRANK A. CHRISTENSEN
HALE ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN
— Vice Presidents

LAMAR HILL, Vice President and General Counsel

WILLIAM E. LAMM, JR.
FRANK E. O'BRIEN
W. L. BATES
HAROLD K. REMINGTON
— Secretaries

CHAS. E. SWAN, Treasurer

WILLIAM P. HARVEY
LEWIS A. NICHOLAS
CORNELIUS O'LEARY, JR.
— Assistant Secretaries

WM. H. EMES, Auditor

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
WILLIAM G. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
ERNEST STURM
HAROLD T. WHITE
WILLIS D. WOOD

The Fidelity and Casualty Company of New York

HOME OFFICE, NEW YORK, N. Y.

Automatic Schedule Fidelity Bond

No. _____

Employer: _____

Address: _____

_____

Amount of bond: $_____

Premium: $_____

Date of bond: _____, 19__

Bond 1722, 4M
(35071079)

243a-2

Endorsement

The Fidelity and Casualty Company of New York

Bonding Department

SUPERSEDING OUR OWN PRIOR BOND—ATTACHABLE TO UNSTANDARDIZED FIDELITY FORMS OTHER THAN 627 AND 628.

FORM 791F

Date: March 1st, , 1938

This endorsement forms a part of Bond No. 1767864 , issued to "those designated as Insured in Joint Insured Rider attached hereto as a part hereof."

This Bond is issued as a continuation of a bond or bonds (hereinafter called the Prior Bond), heretofore issued by the Company in favor of the Employer, as follows:

Bond #6473, X.Y.Z.Company, Inc. et al 3/1/38.

In order that the change from the Prior Bond to this bond may not impair the Employer's interests, it is agreed that this bond shall be construed to cover every loss within the period of the Prior Bond that would have been recoverable under the Prior Bond had the Prior Bond continued in force.

PROVIDED:

1. That such loss is not recoverable under the Prior Bond solely by reason of the expiration of the term within which claim may be made under the terms of the Prior Bond;

2. That such loss would be within the provisions of this bond had the loss occurred during the currency thereof;

3. That nothing herein contained shall be construed to render the Company liable under this Bond for a larger amount on account of any loss or losses under the Prior Bond than would have been recoverable thereunder had it continued in force, or to increase the time for discovering or making claim for loss under the Prior Bond beyond the time limited therein, had it continued in force; and nothing herein contained shall be construed to render the Company liable under this Bond for a larger amount on account of any loss or losses under the Prior Bond, than the amount carried under this Bond, at the time it becomes effective, on the Employee causing such loss or losses.

4. That the aggregate liability of the Company on account of any loss or losses, whether sustained within the term of the Prior Bond or within the term of this Bond, or partly within the term of each, shall in no event exceed the amount carried under this Bond on the Employee causing such loss or losses.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

Secretary

Accepted and agreed to

_____

Endorsement

The Fidelity and Casualty Company of New York

Bonding Department

Form 792 F.

JOINT INSURED RIDER

(Attachable to *Individual, Name or Position Schedule Bonds* when written for two or more as the Insured)

This rider forms a part of Schedule Bond No. 1767854, executed by The Fidelity and Casualty Company of New York (hereinafter called Company), dated the 1st day of March, 1938, in favor of "those hereinafter designated as Insured."

In consideration of the premium charged for the attached bond it is understood and agreed, anything in the attached bond to the contrary notwithstanding, as follows:

1. That from and after the time this rider becomes effective the Insured under the attached bond are

X.Y.Z. Company, Inc.
Affiliated & Allied Subsidiaries

2. That notice terminating the attached bond as an entirety, or as to any or all of those designated as Insured or as to any Employee shall be given as provided therein either by the Insured first named in the paragraph hereof numbered 1 or by the Company to the Insured first named in the paragraph numbered 1 hereof, as the case may be.

3. That the attached bond shall be terminated as to any Employee immediately upon discovery by any Insured of any fraudulent or dishonest act on the part of such Employee.

4. That the Insured first named in the paragraph hereof numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after any Employer shall learn of any fraudulent or dishonest act on the part of any Employee, give notice to, and file a statement of claim with, the Company, bring legal proceedings for its own account or as trustee for any Insured sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Insured first named in the paragraph hereof numbered 1 shall fully release the Company on account of the loss so paid.

5. That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or paid, the Company shall not be liable under the attached bond on account of any Employee, whether to one or more of those covered under the attached bond as Insured, including those designated above and those heretofore and those hereafter covered as Insured, for more in the aggregate than the amount specified in the attached bond, as the limit of the Company's liability for such Employee.

6. That the Company may, at the request of, or with the consent of, the Insured first named in the paragraph hereof numbered 1, add to the list of those designated as Insured, increase or decrease any of the amounts carried under the attached bond, issue any rider or riders to form a part thereof and/or cancel or annul any of the riders attached or to be attached thereto.

7. That if the attached bond be terminated [illegible]

bond are

X.Y.Z. Company, Inc.
Affiliated & Allied Subsidiaries

2. That notice terminating the attached bond as an entirety, or as to any or all of those designated as Insured or as to any Employee shall be given as provided therein either by the Insured first named in the paragraph hereof numbered 1 or by the Company to the Insured first named in the paragraph numbered 1 hereof, as the case may be.

3. That the attached bond shall be terminated as to any Employee immediately upon discovery by any Insured of any fraudulent or dishonest act on the part of such Employee.

4. That the Insured first named in the paragraph hereof numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after any Employer shall learn of any fraudulent or dishonest act on the part of any Employee, give notice to, and file a statement of claim with, the Company, bring legal proceedings for its own account or as trustee for any Insured sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Insured first named in the paragraph hereof numbered 1 shall fully release the Company on account of the loss so paid.

5. That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or paid, the Company shall not be liable under the attached bond on account of any Employee, whether to one or more of those covered under the attached bond as Insured, including those designated above and those heretofore and those hereafter covered as Insured, for more in the aggregate than the amount specified in the attached bond, as the limit of the Company's liability for such Employee.

6. That the Company may, at the request of, or with the consent of, the Insured first named in the paragraph hereof numbered 1, add to the list of those designated as Insured, increase or decrease any of the amounts carried under the attached bond, issue any rider or riders to form a part thereof and/or cancel or annul any of the riders attached or to be attached thereto.

7. That if the attached bond be terminated as an entirety as herein provided, or in any other manner, there shall be no liability under the attached bond on account of any loss unless discovered and reported to the Company before the expiration of the period that is stipulated in the attached bond for discovery and report of loss sustained prior to such termination, and that if prior to the termination of the attached bond as an entirety, the attached bond be terminated as herein provided, as to any Employee, or be terminated as to any Insured as herein provided or in any other manner, there shall be no liability under the attached bond on account of any loss caused by such Employee or sustained by such Employer unless discovered and reported to the Company before the expiration of an equal period following such termination as to such Employee or as to such Insured, as the case may be.

8. That the attached bond shall be subject to all its agreements, limitations and conditions except as modified in, or in accordance with, this rider.

9. That this rider shall be effective on and after the 1st day of March, 19 38.

Signed, sealed and dated this 1st day of August, 19 38.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

By ..... John Doe ..... Attorney

Accepted and Agreed to:

.....

By ..... Title

243a-4

Bond 3147 10m ★ (37019121)

Sheet No._____

The Fidelity and Casualty Company of New York

Bonding Department

SCHEDULE OF EMPLOYEES

Forming part of Schedule Bond No. 1767854 Dated March 1st, 1938

Bond. 1331A. 10M. ★ (1810567)

Name of Employer X.Y.Z. Company, Inc. et al

NAME	POSITION	WHERE EMPLOYED	AMOUNT OF SECURITY	PREMIUM
Brackea, Alfred	Bookkeeper	Harrison, N.J.	$ 5,000.	$ 20 00
Jones, Foster L.	Agent-Manager	Cedartown, Ga.	20,000.	30 00
Knoth, Michael C.	Office Manager & Cashier	San Francisco, Cal.	20,000.	80 00
Meyers, William H.	Accountant	Harrison, N.J.	5,000.	20 00
O'Neill, Nora	Bookkeeper	Seattle, Wash.	10,000.	40 00
Riley, Nellie C.	Cashier	Chicago, Ill.	10,000.	40 00
Vetter, Albert V.	Secretary	Harrison, N.J.	5,000.	20 00
		Total	$75,000.	$300 00

SPECIFIC INSURANCE IF ANY	NUMBER OF PLATES	HEIGHT IN INCHES	WIDTH IN INCHES	DESCRIPTION OF GLASS, LETTERING, ORNAMENTATION, AND SETTING	PREMISES-WHERE GLASS IS LOCATED (STREET, NUMBER, TOWN, AND STATE)	CODE	BOOK PREMIUM	BOOK PLUS OR LESS DIFFERENTIAL
				PHILADELPHIA,	PENNSYLVANIA			
	3	93	107	Fronts				97 12
	1	84	107	Front				17 60
	6	42	107	Fronts				42 48
	2	40½	107	Fronts				14 16
	1	29	63	Door				2 78
	51	12	24	Uppers-D.S.				14 28
	102	12	12	Uppers-D.S.				12 24
	2	38½	46	Doors in Factory				4 52
								195 10
				195.10 - 42½% = 61.94 - 154.85				
				BROOKLYN,	NEW YORK			
	6	32	29	Fronts				7 56
	1	28	63	Door				2 40
	1	72	32	Head Light				3 42
	1	72	72	Face of Building				8 28
	1	28	27	Transom-Florentine				1 04
	1	102	61	Face of Building				9 84
								32 56
				32.84 x .4025 - 13.22 - 33.06				
				CHICAGO, COOK,	ILLINOIS			
	1	94	56	Front				7 52
	4	94	100	Fronts			70.56	
	1	94	132	Front			23.27	
	2	94	132	Side Fronts			46.54	
	2	66	22	Doors with 1½" Bevel				4 20
	3	32	19	Transom Panels				2 40
	1	30	50	Front Upper-D.S.				2 17
	4	36	44	Front Uppers-D.S.				9 16
	4	30	42	Front Uppers-D.S.				7 28
	2	32	60	Front Uppers-D.S.				5 56
	4	32	60	Side Front Uppers-				11 12
				40.81 - 85% = 25.40 - 56.01				
				140.37 - 45% = 77.20 -193.00				
					249.01			249.01
				DETROIT,	MICHIGAN			
	2	73	35½	Alley Front				9 04
	2	34	34	Alley Lite				3 34
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16

				BROOKLYN, NEW YORK						
	6	32	29	Fronts					7	86
	1	25	63	Door					2	40
	1	72	32	Head Light					3	42
	1	72	72	Face of Building					5	28
	1	28	27	Transom-Florentine					1	04
	1	102	61	Face of Building					9	84
									32	86
				32.86 x .4025 - 13.22 - 33.06						
				CHICAGO, COOK, ILLINOIS						
	1	94	84	Front					7	92
	4	94	100	Fronts				70.56		
	1	94	132	Front				23.27		
	2	94	132	Side Fronts				46.54		
	2	66	22	Doors with 1½" Bevel					4	20
	3	32	19	Transom Panels					2	40
	1	30	80	Front Upper-D.S.					2	17
	4	36	44	Front Uppers-D.S.					9	16
	4	30	42	Front Uppers-D.S.					7	28
	2	32	60	Front Uppers-D.S.					5	56
	4	32	60	Side Front Uppers-					11	12
				49.81 - 55% = 22.41 - 56.01						
				140.37 - 45% = 77.20 -193.00						
							249.01			
									249	.01
				DETROIT, MICHIGAN						
	2	73	39½	Alley Front					9	06
	2	34	34	Alley Lite					3	34
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	2	66	7	Side Lites					1	25
	1	60	28	Door					2	45
	1	60	28	Door-Vestibule						82
	3	18	36	Imperial Uppers-Over Door					2	45
	6	18	44	Imperial Uppers-Over Door					6	30
	2	26	7	Imperial Uppers-Over Door						36
	1	26	36	Imperial Upper-Over Door					1	36
				58.31 - 50% = 29.15 - 72.87					58	.31

DESCRIBING INSURANCE IF ANY	NUMBER OF PLATES	WIDTH IN INCHES	HEIGHT IN INCHES	DESCRIPTION- OBSERVATIONS, AND SETTING	(STREET, NUMBER, TOWN, AND STATE)	CODE	PREMIUM	PLUS OR LESS DIFFERENTIAL
				South Bend, Indiana				
	2	70	28	Doors				5 66
	2	40	28	Vestibule Doors				1 00
	4	54	28	Doors-Revolving				5 12
	4	54	22	Bent Plates-Foyer				3 16
	2	60	48	Plates-Foyer				2 96
	2	70	24	Doors-Foyer				1 66
	2	100	64	Plates-Foyer				6 64
	1	64	24	Transom-Foyer				78
	2	70	28	Plate Doors- old Stippled				5 66
				38.49 - 66 2/3% =	12.83 - 32.07			32. 17

EXHIBIT 5

GLASS POLICY

The Fidelity and Casualty Company of New York

"America Fore" Insurance and Indemnity Group

(A Stock Company hereinafter called the Company)

Duplicate Copy

No PG 21206

No of Preceding Policy _____

In consideration of the premium, and subject to the conditions hereinafter contained,

Agrees to Indemnify *the Assured, named herein, against loss or damage, by accidental breakage (except by fire), while this policy is in force, of the glass covered hereunder, including lettering and ornamentation on such glass only when the lettering and ornamentation are specifically described in the following*

Schedule

1. Name of Assured W X Y Z

2. Address of Assured 80 Maiden Lane, New York City

4. The premium is $541.85 payable $ 541.85 in advance, $ - - - - on 1st anniversary, and $ - - - - - on 2nd anniversary.

5. The POLICY PERIOD shall be from January 1, 1938 to January 1st, 1941 at 12 o'clock noon, standard time at the location of the premises as to each of said dates.

6. The glass covered hereunder is described below. Unless specifically described as such hereunder, this policy does not cover lettering or ornamentation, or clamped-, glued-, bent-, wired-, leaded-, or cathedral-glass, or door-glass, mirrors, or show-case glass, or glass not set in frames, sashes, or bars, or any glass other than fully-glazed plain-plate-flat glass.

Number of Plates	Height in Inches	Width in Inches	Description of Glass, Lettering, Ornamentation, and Setting	Premises Where Glass is Located (Street, Number, Town, and State)

HOME OFFICE COPY

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE

The Fidelity and Casualty Company of New York

COUNTERSIGNING ENDORSEMENT

70636

4. The premium is $ 241.00 payable $ 241.00 in advance, $ - - - on 1st anniversary, and $ - - - - on 2nd anniversary.

5. The POLICY PERIOD shall be from January 1, 1938 to January 1st, 1941 at 12 o'clock noon, standard time at the location of the premises as to each of said dates.

6. The glass covered hereunder is described below. Unless specifically described as such hereunder, this policy does not cover lettering or ornamentation, or clamped-, glued-, bent-, wired-, leaded-, or cathedral-glass, or door-glass, mirrors, or show-case glass, or glass not set in frames, sashes, or bars, or any glass other than fully-glazed plain-plate flat glass.

NUMBER OF PLATES	HEIGHT IN INCHES	WIDTH IN INCHES	DESCRIPTION OF GLASS, LETTERING, ORNAMENTATION, AND SETTING	PREMISES WHERE GLASS IS LOCATED (STREET, NUMBER, TOWN, AND STATE)

HOME OFFICE COPY

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE WHERE THERE IS A RESIDENT AGENCY LAW SO REQUIRING

The Fidelity and Casualty Company of New York

70636

COUNTERSIGNING ENDORSEMENT

Date: 19

It is hereby understood and agreed that the schedule of this policy contains a premium of $ ..... for insurance in the State of .....

This endorsement forms a part of Policy No.

issued to

Countersigned by

B M Culver

President

Authorized Representative.

BRANCH OFFICE

GENERAL AGENT

AGENT OR BROKER

(ADDRESS)

L630B. 40M. ★ 78001-88000 (39034842)

243b-2

187

THE FOREGOING AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

LIMITS OF INDEMNITY PAYMENT AND REPLACEMENT A. The Company's liability is limited to the true value of the insured glass lettering and ornamentation at the time of the breakage not exceeding the amount of any specific insurance thereon. The Company may replace, without unnecessary delay, any broken glass and lettering and ornamentation thereon insured hereunder, or pay for the loss in money within the foregoing limitation, as the Company may elect. In either case the broken glass shall be the property of the Company. Whenever necessary, the Assured, at his own expense, shall remove and replace any fixtures or other obstructions to the replacement of the glass.

NOTICE OF BREAKAGE B. Immediate written notice of any loss covered hereby, with full particulars so far as determinable, shall be given to the Company at its home office or to a duly authorized agent of the Company, and the Assured shall make all reasonable efforts to preserve the glass and to prevent further damage. The Company may require the Assured to file affirmative proof of loss with full particulars, under oath, on forms provided by the Company.

EXCLUSIONS C. The Company shall not be liable for any loss or damage occurring before the glass is completely glazed in a workmanlike manner; nor for any loss or damage caused by, or resulting from fire, whether in the premises described in the Schedule or elsewhere.

REINSTATEMENT D. Upon replacement of any glass or lettering or ornamentation, or payment therefor by the Company, the insurance hereunder shall continue automatically on the new glass, lettering and ornamentation without additional premium for the unexpired term.

OTHER INSURANCE E. If the Assured or other interested party carries insurance other than the insurance under this policy against a loss covered by this policy, the Company shall not be liable for a greater proportion of any such loss than the amount applicable hereunder bears to the total amount of all valid and collectible insurance covering such loss.

SUSPENSION F. The Company shall be permitted, at all reasonable times, to inspect the premises and the glass described in the Schedule; and any representative of the Company may suspend the insurance as respects the entire risk, or as respects any part thereof, by written notice delivered or mailed to the Assured at the address given in the Schedule.

CANCELATION G. Without prejudice to the rights of the Assured as respects anything that may occur during the period that the policy is in force, the Company may cancel this policy at any time (with or without tender of unearned premium) by mailing a cancelation notice to the Assured at the address given herein at least five days prior to the date that the cancelation takes effect, or by delivering to the Assured a cancelation notice at least five days prior to the said effective date. The Assured may cancel this policy by like notice to the Company or by surrender of the policy. If canceled by the Company, the Company shall be entitled to the earned premium, pro rata, when determined. If canceled by the Assured, the Company shall be entitled to the earned premium calculated on the basis of the short-rate table set forth hereon. The Company's check delivered to the Assured, or sent by mail to the Assured at the address given herein, shall be a sufficient tender of any unearned premium.

SPECIAL STATUTES H. No suit shall be brought under this policy until three months after the loss occurs, nor at all unless begun within two years from such date. If any limitation of time for notice of loss or damage, or for any legal proceeding herein contained, is shorter than that permitted by any specific statutory provision in relation thereto, in force in the state in which the premises of the Insured, as herein described, are located, the shortest limitation of time permitted by the law of such state shall govern and supersede the limitation provided by the policy.

SUBROGATION I. The Company shall be subrogated in case of loss covered hereunder, to the extent of such loss, to all the Assured's rights of recovery therefor against persons, corporations, associations, or estates.

ASSIGNMENT J. No assignment of interest under this policy shall bind the Company unless its consent is endorsed hereon. If the death, insolvency, or bankruptcy of the Assured shall occur during the policy period, the insurance under this policy during the remaining unexpired portion of such period shall continue in favor of the legal representatives of the Assured, provided written notice shall be given the Company within thirty days after the date of such death, insolvency, or bankruptcy.

CHANGES K. No provision or condition of this policy shall be waived or altered except by endorsement attached hereto, signed by the President, or a Vice-President, of the Company; nor shall notice to any agent, or knowledge possessed by any agent or by any other person, be held to effect a waiver or change in any part of this policy.

In Witness Whereof the Company has caused this policy to be signed by its President and its Secretary, but the policy shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

OTHER INSURANCE E. If the Assured or other interested party carries insurance other than the insurance under this policy against a loss covered by this policy, the Company shall not be liable for a greater proportion of any such loss than the amount applicable hereunder bears to the total amount of all valid and collectible insurance covering such loss.

SUSPENSION F. The Company shall be permitted, at all reasonable times, to inspect the premises and the glass described in the Schedule; and any representative of the Company may suspend the insurance as respects the entire risk, or as respects any part thereof, by written notice delivered or mailed to the Assured at the address given in the Schedule.

CANCELATION G. Without prejudice to the rights of the Assured as respects anything that may occur during the period that the policy is in force, the Company may cancel this policy at any time (with or without tender of unearned premium) by mailing a cancelation notice to the Assured at the address given herein at least five days prior to the date that the cancelation takes effect, or by delivering to the Assured a cancelation notice at least five days prior to the said effective date. The Assured may cancel this policy by like notice to the Company or by surrender of the policy. If canceled by the Company, the Company shall be entitled to the earned premium, pro rata, when determined. If canceled by the Assured, the Company shall be entitled to the earned premiums calculated on the basis of the short-rate table set forth hereon. The Company's check delivered to the Assured, or sent by mail to the Assured at the address given herein, shall be a sufficient tender of any unearned premium.

SPECIAL STATUTES H. No suit shall be brought under this policy until three months after the loss occurs, nor at all unless begun within two years from such date. If any limitation of time for notice of loss or damage, or for any legal proceeding herein contained, is shorter than that permitted by any specific statutory provision in relation thereto, in force in the state in which the premises of the Insured, as herein described, are located, the shortest limitation of time permitted by the law of such state shall govern and supersede the limitation provided by the policy.

SUBROGATION I. The Company shall be subrogated in case of loss covered hereunder, to the extent of such loss, to all the Assured's rights of recovery therefor against persons, corporations, associations, or estates.

ASSIGNMENT J. No assignment of interest under this policy shall bind the Company unless its consent is endorsed hereon. If the death, insolvency, or bankruptcy of the Assured shall occur during the policy period, the insurance under this policy during the remaining unexpired portion of such period shall continue in favor of the legal representatives of the Assured, provided written notice shall be given the Company within thirty days after the date of such death, insolvency, or bankruptcy.

CHANGES K. No provision or condition of this policy shall be waived or altered except by endorsement attached hereto, signed by the President, or a Vice-President, of the Company; nor shall notice to any agent, or knowledge possessed by any agent or by any other person, be held to effect a waiver or change in any part of this policy.

In Witness Thereof the Company has caused this policy to be signed by its President and its Secretary, but the policy shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

H. H. Remington
Secretary

B. M. Culver
President

DUPLICATE COPY

(Space for Attachment of Endorsements)

243b-4

189

OFFICERS

BERNARD M. CULVER, President
FRANK A. CHRISTENSEN, Vice President

Vice Presidents:
HALB ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN

Secretaries:
E. LAMM, JR.
FRANK E. O'BRIEN
WM. L. BATES
HAROLD K. REMINGTON

CHAS. E. SWAN, Treasurer

Assistant Secretaries:
CORNELIUS O'LEARY, JR.
WM. P. HARVEY
LEWIS A. NICHOLAS
GEORGE A. BOYD

WM. H. EMES, Comptroller

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
BENJAMIN R. C. LOW
ETHELBERT I. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

Glass Policy

DUPLICATE COPY

No. PG 21206

EXPIRATION: January 1st, 1941

ASSURED: W X Y Z

PREMIUM: $541.85

The Fidelity and Casualty Company of New York

AMERICA FORE INSURANCE AND INDEMNITY GROUP

PLEASE READ YOUR POLICY

2434-5

Short Rate Cancellation Table

FOR TERM OF ONE YEAR

	Per cent. of Annual Prem.		Per cent. of Annual Prem.
1 day	2	50 days	28
2 days	4	55 "	29
3 "	5	60 " or 2 months	30
4 "	6	65 "	33
5 "	7	70 "	36
6 "	8	75 "	37
7 "	9	80 "	38
8 "	9	85 "	39
9 "	10	90 " or 3 months	40
10 "	10	105 "	45
11 "	11	120 " or 4 months	50
12 "	12	135 "	55
13 "	13	150 " or 5 months	60
14 "	13	165 "	65
15 "	14	180 " or 6 months	70
16 "	14	195 "	73
17 "	15	210 " or 7 months	75
18 "	16	225 "	78
19 "	16	240 " or 8 months	80
20 "	17	255 "	83
25 "	19	270 " or 9 months	85
30 " or 1 month	20	285 "	88
35 "	23	300 " or 10 months	90
40 "	26	315 "	93
45 "	27	330 " or 11 months	95
		360 " or 12 months	100

Period exceeding 20 days but not exceeding 25 days, to be the rate of 25 days, and so on up to one year.

FOR TERM OF THREE YEARS

	Per cent. of 3 yr. Prem.		Per cent. of 3 yr. Prem.
1 month	7.4	19 months	55.4
2 months	11.1	20 "	58.
3 "	14.8	21 "	60.7
4 "	18.5	22 "	63.3
5 "	22.2	23 "	65.9
6 "	25.9	24 "	68.5
7 "	27.8	25 "	71.2
8 "	29.6	26 "	73.8
9 "	31.5	27 "	76.4
10 "	33.3	28 "	79.
11 "	35.2	29 "	81.7
12 "	37.	30 "	84.3
13 "	39.6	31 "	86.9
14 "	42.3	32 "	89.5
15 "	44.9	33 "	92.1
16 "	47.5	34 "	94.8
17 "	50.2	35 "	97.4
18 "	52.8	36 "	100.

Period exceeding one month but not equaling two months, to be at the rate of two months and so on up to three years.

243b-5

NATIONAL STANDARD AUTOMOBILE LIABILITY POLICY

PLAINTIFF'S EXH

The Fidelity and Casualty Company of New York

"AMERICA FORE" INSURANCE AND INDEMNITY GROUP

A Stock Company

HOME OFFICE: 70644

FORM W
BY A RESIDENT
STATE WHERE
LAW SO REQU

DECLARATIONS

Name of insured X Y Z Co.

2. Address Springfield, Massachusetts (No. STREET TOWN COUNTY)

3. The named insured is 1-Corporation 2-Individuals

4. The occupation of the named insured is Employees of X Y Z C

5. The description of all automobiles covered is given below. The insurance under this to the Coverages for which a premium applicable to such automobile is charged. Cove automobile is charged are inoperative as to such automobile. The limit of the comp stated herein, subject to all of the terms of the policy having reference thereto.

This policy is issued to _____ Countersig

In the Sta

Policy No. Exhibit 6

Date: 19

for insurance

BRANCH OFFICE GENERAL AGENT _____ (ADDRESS)

L430B. 243b-6

President

DESCRIPTION	AUTO 1	AUTO 2
(A) TRADE NAME		
(B) MOTOR NUMBER		
(C) SERIAL NUMBER		
(D) YEAR AND MODEL		As per s
(E) STYLE OF BODY / CAPACITY IN TONS OF COMMERCIAL CAR		

6. COVERAGES	LIMITS OF LIABILITY	PREMIUM AUTO 1	PREMIUM AUTO 2	PREMIUM AUTO 3	PREMIUM AUTO 4	TOTAL
A. BODILY INJURY LIABILITY	$ 10,000 EACH PERSON AND SUBJECT TO THAT LIMIT FOR EACH PERSON; $ 20,000 EACH ACCIDENT	$	$	$	$	$ 772.80
B. PROPERTY DAMAGE LIABILITY	$ 5,000 EACH ACCIDENT	$	$	$	$	$ 173.50
C. GLASS BREAKAGE	ACTUAL CASH VALUE	$	$	$	$	$

AUTOMOBILE DEFINED. TWO OR MORE AUTOMOBILES. EXCEPT WHERE SPECIFICALLY STATED TO THE CONTRARY, THE WORD "AUTOMOBILE" WHEREVER USED IN THIS POLICY SHALL MEAN THE MOTOR VEHICLE TRAILER, OR SEMI-TRAILER DESCRIBED HEREIN; AND THE WORD "TRAILER" SHALL INCLUDE SEMI-TRAILER. WHEN TWO OR MORE AUTOMOBILES ARE INSURED HEREUNDER, THE TERMS OF THIS POLICY SHALL APPLY SEPARATELY TO EACH, BUT AS RESPECTS LIMITS OF BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY A MOTOR VEHICLE AND A TRAILER OR TRAILERS ATTACHED THERETO SHALL BE HELD TO BE ONE AUTOMOBILE.

TOTAL PREMIUM $946.30

7. Policy period: From January 1st, 1938 at 12:01 (HOUR AND MINUTE) o'clock A M., to January 1st, 1939 12:01 A.M. standard time at the address of the named insured as stated herein.

8. The purposes for which the automobile is to be used are Pleasure and business

PURPOSES OF USE DEFINED. (A) THE TERM "PLEASURE AND BUSINESS" IS DEFINED AS PERSONAL, PLEASURE, FAMILY, AND BUSINESS USE; (B) THE TERM "COMMERCIAL" IS DEFINED AS THE TRANSPORTATION OR DELIVERY OF GOODS, MERCHANDISE, OR OTHER MATERIALS, AND USES INCIDENTAL THERETO, IN DIRECT CONNECTION WITH THE NAMED INSURED'S BUSINESS OCCUPATION AS EXPRESSED ABOVE; (C) USE OF THE AUTOMOBILE FOR THE PURPOSES STATED

161

The description of all automobiles covered is given below. The insurance under this to the Coverages for which a premium applicable to such automobile is charged. Cove automobile is charged are inoperative as to such automobile. The limit of the compa stated herein, subject to all of the terms of the policy having reference thereto.

DESCRIPTION	AUTO 1	AUTO 2
(A) TRADE NAME		
(B) MOTOR NUMBER		
(C) SERIAL NUMBER		
(D) YEAR AND MODEL		As per s
(E) STYLE OF BODY CAPACITY IN TONS OF COMMERCIAL CAR		

6. COVERAGES	LIMITS OF LIABILITY	PREMIUM AUTO 1	PREMIUM AUTO 2	PREMIUM AUTO 3	PREMIUM AUTO 4	TOTAL
A. BODILY INJURY LIABILITY	$ 10,000 EACH PERSON AND SUBJECT TO THAT LIMIT FOR EACH PERSON; $ 20,000 EACH ACCIDENT	$	$	$	$	$ 772.80
B. PROPERTY DAMAGE LIABILITY	$ 5,000 EACH ACCIDENT	$	$	$	$	$ 173.50
C. GLASS BREAKAGE	ACTUAL CASH VALUE	$	$	$	$	$

AUTOMOBILE DEFINED. TWO OR MORE AUTOMOBILES. EXCEPT WHERE SPECIFICALLY STATED TO THE CONTRARY, THE WORD "AUTOMOBILE" WHEREVER USED IN THIS POLICY SHALL MEAN THE MOTOR VEHICLE TRAILER, OR SEMI-TRAILER DESCRIBED HEREIN; AND THE WORD "TRAILER" SHALL INCLUDE SEMI-TRAILER. WHEN TWO OR MORE AUTOMOBILES ARE INSURED HEREUNDER, THE TERMS OF THIS POLICY SHALL APPLY SEPARATELY TO EACH, BUT AS RESPECTS LIMITS OF BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY A MOTOR VEHICLE AND A TRAILER OR TRAILERS ATTACHED THERETO SHALL BE HELD TO BE ONE AUTOMOBILE.

TOTAL PREMIUM $946.30

7. Policy period: From January 1st, 1938 at 12:01 (HOUR AND MINUTE) o'clock A M., to January 1st, 1939 12:01 A.M. standard time at the address of the named insured as stated herein.

8. The purposes for which the automobile is to be used are Pleasure and business

PURPOSES OF USE DEFINED. (A) THE TERM "PLEASURE AND BUSINESS" IS DEFINED AS PERSONAL, PLEASURE, FAMILY, AND BUSINESS USE; (B) THE TERM "COMMERCIAL" IS DEFINED AS THE TRANSPORTATION OR DELIVERY OF GOODS, MERCHANDISE, OR OTHER MATERIALS, AND USES INCIDENTAL THERETO, IN DIRECT CONNECTION WITH THE NAMED INSURED'S BUSINESS OCCUPATION AS EXPRESSED ABOVE; (C) USE OF THE AUTOMOBILE FOR THE PURPOSES STATED INCLUDES THE LOADING AND UNLOADING THEREOF.

9. The automobile will be principally garaged and used in the above town, county, and state, unless otherwise specified herein.

10. The named insured is the sole owner of the automobiles, except as herein stated: As per Schedule attached

11. No insurer has canceled any automobile insurance issued to the named insured, nor declined to issue such insurance, during the past year, except as herein stated No exceptions

BRANCH OFFICE Met. nt;ak 12-29-38

GENERAL AGENT

AGENT OR BROKER P.A. Post & Co.Inc. 1 Liberty St., New York City (ADDRESS)

AGENCY CODE 49 0673

COUNTERSIGNED BY Duplicate Copy

John Doe (COUNTERSIGNING AGENT OR MANAGER)

Liab1471E 50M A76200!-AB12.000 (3804)020) 5M Duplicate

243-C

243b-6

Exhibit 6.

Graham President

for insurance

70644

191

192

NATIONAL
STANDARD
AUTOMOBILE
LIABILITY POLICY

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

(A Stock insurance company, herein called the company)

Does hereby agree with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I COVERAGE A—BODILY INJURY LIABILITY. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

II COVERAGE B—PROPERTY DAMAGE LIABILITY. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

III COVERAGE C—GLASS BREAKAGE. To pay for the breakage of glass set as windshield and body plates as a part of an automobile described in the declarations for which a premium for glass breakage is specified therein.

IV DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS. It is further agreed that as respects insurance afforded by this policy under coverages A and B the company shall (a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company; (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident. The company agrees to pay the expenses incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

V DEFINITION OF "INSURED". The unqualified word "insured" wherever used includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to any loss against which he has other valid and collectible insurance; (b) to any person or organization with respect to bodily injury to or death of any person who is a named insured; (c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof; (d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

VI AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES. If the named insured who is the owner of the automobile acquires ownership of another automobile, such insurance as is afforded by this policy applies also to such other automobile as of the date of its delivery to him, subject to the following additional conditions: (1) if the company insures all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it is used for pleasure purposes or in the business of the named insured as expressed in the declarations, but only to the extent applicable to all such previously owned automobiles; (2) if the company does not insure all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it replaces an automobile described in this policy and may be classified for the purpose of use stated in this policy, but only to the extent applicable to the replaced automobile; (3) the insurance afforded by this policy automatically terminates upon the replaced automobile at the date of such delivery; and (4) this agreement does not apply (a) to any loss against which the named insured has other valid and collectible insurance, nor (b) unless the named insured notifies the company within ten days following the date of delivery of such other automobile, nor (c) except during the policy period, but if the date of delivery of such other automobile is prior to the effective date of this policy the insurance applies as of the effective date of this policy, nor (d) unless the named insured pays any additional premium required because of the application of this insurance to such other automobile.

VII POLICY PERIOD, TERRITORY, PURPOSES OF USE. This policy applies only to accidents which occur and to direct losses to the property insured which are sustained during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

THIS POLICY DOES NOT APPLY: (a) under any of the above coverages, while the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use is specifically declared and described in this policy and premium charged therefor; (b) under coverages A and B, while the automobile is used for the towing of any trailer not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile not covered by like insurance in the company; (c) under coverages A and B, while the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to [illegible]

to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

III COVERAGE C—GLASS BREAKAGE. To pay for the breakage of glass set as windshield and body plates as a part of an automobile described in the declarations for which a premium for glass breakage is specified therein.

IV DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS. It is further agreed that as respects insurance afforded by this policy under coverages A and B the company shall (a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company; (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident. The company agrees to pay the expenses incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

V DEFINITION OF "INSURED". The unqualified word "insured" wherever used includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to any loss against which he has other valid and collectible insurance; (b) to any person or organization with respect to bodily injury to or death of any person who is a named insured; (c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof; (d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

VI AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES. If the named insured who is the owner of the automobile acquires ownership of another automobile, such insurance as is afforded by this policy applies also to such other automobile as of the date of its delivery to him, subject to the following additional conditions: (1) if the company insures all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it is used for pleasure purposes or in the business of the named insured as expressed in the declarations, but only to the extent applicable to all such previously owned automobiles; (2) if the company does not insure all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it replaces an automobile described in this policy and may be classified for the purpose of use stated in this policy, but only to the extent applicable to the replaced automobile; (3) the insurance afforded by this policy automatically terminates upon the replaced automobile at the date of such delivery; and (4) this agreement does not apply (a) to any loss against which the named insured has other valid and collectible insurance, nor (b) unless the named insured notifies the company within ten days following the date of delivery of such other automobile, nor (c) except during the policy period, but if the date of delivery of such other automobile is prior to the effective date of this policy the insurance applies as of the effective date of this policy, nor (d) unless the named insured pays any additional premium required because of the application of this insurance to such other automobile.

VII POLICY PERIOD, TERRITORY, PURPOSES OF USE. This policy applies only to accidents which occur and to direct losses to the property insured which are sustained during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

THIS POLICY DOES NOT APPLY: (a) under any of the above coverages, while the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use is specifically declared and described in this policy and premium charged therefor; (b) under coverages A and B, while the automobile is used for the towing of any trailer not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile not covered by like insurance in the company; (c) under coverages A and B, while the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to such person or to his occupation, or by any person in any prearranged race or competitive speed test; (d) under coverages A and B to any liability assumed by the insured under any contract or agreement; or to any accident which occurs after the transfer during the policy period of the interest of the named insured in the automobile, without the written consent of the company; (e) under coverage A, to bodily injury to or death of any employee of the insured while engaged in the business of the insured, other than domestic employment, or in the operation, maintenance or repair of the automobile; or to any obligation for which the insured may be held liable under any workmen's compensation law; (f) under coverage B, to property owned by, rented to, leased to, in charge of, or transported by any insured; (g) under coverage C, to lamps or mirrors, or to loss caused directly or indirectly by fire, theft, robbery, or pilferage.

INSURED X Y Z Co. THE FIDELITY CASUALTY COMPANY OF NEW YORK POLICY No. A 840618

SHEET NO. / ITEM NO.	EQUIP. NO.	YEAR MODEL	TRADE NAME	BODY TYPE, IF TRUCK STATE TONNAGE	MOTOR NUMBER	SERIAL OR FACTORY NO.	LOCATION	OPERATOR	SCHEDULE OF COVERAGE & LIMITS OF INS. ALL ITEMS BELOW MARKED VOID OR NOT FILLED IN ARE VOID — BODILY INJURY OR DEATH — LIMITS: ONE PERSON	BODILY INJURY OR DEATH — LIMITS: TWO OR MORE PERSONS	PROPERTY DAMAGE LIMIT	EFFECTIVE DATE OF COVERAGE	PREMIUM DISTRIBUTION: BODILY INJURY LIABILITY	PREMIUM DISTRIBUTION: PROPERTY DAMAGE
		1935	Pontiac	Sedan	675013	6AB-40137	Hempstead, L.I. New York	G. S. Baird	10000.	20000.	5000.	1-1-38	41.40	7.50
		1938	Ford	Sedan	1102781	1102781	Flushing, N.Y.	A. N. Gardner	10000.	20000.	5000.	1-1-38	90.60	8.50
		1936	Plymouth	Sedan	P2376771	2880378	Lakewood, Ohio	A. J. Kelly	10000.	20000.	5000.	1-1-38	43.70	12.00
		1938	Dodge	Sedan	D8-7239	30006908	Fairlawn, New Jersey	W. H. Singley	10000.	20000.	5000.	1-1-38	47.15	12.00
		1938	Plymouth	Sedan	P4 3165	10110719	Harrisburg, Pennsylvania	H. J. Allen	10000.	20000.	5000.	1-1-38	21.85	9.00
		1937	Oldsmobile	Sedan	B-746-298	K-440142	New Orleans, Louisiana	G.A. Robideaux	10000.	20000.	5000.	1-1-38	29.90	10.00
		1936	DeSoto	Sedan	S1 39220	5517089	Detroit, Michigan	H.S. Hoag	10000.	20000.	5000.	1-1-38	26.45	9.00
		1936	Buick	Sedan	430798-29	2909942	St. Albans, New York	A.T. Mattson	10000.	20000.	5000.	1-1-38	90.60	8.50
		1936	Oldsmobile	Coach	1-2367-6A	133805	Poughkeepsie New York	Vera S. Alexander	10000.	20000.	5000.	1-1-38	42.55	7.00
		1937	Pontiac	Coach	6-252702	6-GA-28991	Detroit, Michigan	R. J. Greene	10000.	20000.	5000.	1-1-38	26.45	9.00
		1937	Dodge	Sedan	D5-168994	5277300	Somers, Connecticut	R. H. Syner	10000.	20000.	5000.	1-1-38	37.95	9.00
		1937	Dodge	Sedan	D5-209682	4714382	Cleveland, Ohio	D. B. Lawrence	10000.	20000.	5000.	1-1-38	43.70	12.00
		1936	Pontiac	Coupe	6126456	6AB36250	Roosevelt, L.I., N.Y.	Andrew Ferraro	10000.	20000.	5000.	1-1-38	41.40	7.50
		1937	Plymouth	Sedan	P4 283541	102782-03	Bronx, N.Y.	A.A.Kreutzer	10000.	20000.	5000.	1-1-38	90.85	15.50
		1937	Ford	Coupe	3399627		Rochester, New York	H.H. Strickland	10000.	20000.	5000.	1-1-38	41.40	8.00
		1937	Oldsmobile	Coupe	7804572	7.489791	Rochester, New York	W.T.Myrtle,Jr.	10000.	20000.	5000.	1-1-38	41.40	8.00
		1937	Chrysler	Coupe	C39910	6706603	Richmond, Va.	D.F.Hardeman	10000.	20000.	5000.	1-1-38	37.95	7.00
		1937	Plymouth	Coach	P4-111952	1106466	Philadelphia, Pennsylvania	L.L.Cherbonneau	10000.	20000.	5000.	1-1-38	57.50	13.00
													772.80	173.50

THIS FORM TO BE USED ONLY FOR ORIGINAL SCHEDULE OR ADDITIONS TO ORIGINAL SCHEDULE.

BRANCH OFFICE — GENERAL AGENT: Hoe 65-0673

AGENT OR BROKER: P.A. Post & Co. (ADDRESS)

This schedule forms a part of Policy No. A 840618 issued to X Y Z Co.

B M Culver President

243c-2

LIBIC, N.Y. 4-(1933-1937)

CONDITIONS

A LIMITS OF LIABILITY. The limit of bodily injury liability expressed in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of one person in any one accident; the limit of such liability expressed in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of two or more persons in any one accident. The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

B NOTICE OF ACCIDENT—CLAIM OR SUIT. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the name and address of the injured and of any available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

C ACTION AGAINST COMPANY. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the conditions hereof, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the company, nor in either event unless suit is instituted within two years and one day after the date of such judgment or written agreement. Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the insured. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured shall not relieve the company of any of its obligations hereunder.

D OTHER INSURANCE. If the named insured has other insurance against a loss covered by this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability expressed in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

E ASSISTANCE AND COOPERATION OF THE INSURED. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and the company shall reimburse the insured for any expense, other than loss of earnings, incurred at the company's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

G SUBROGATION. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

H ASSIGNMENT. No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless cancelled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) subject otherwise to the provisions of paragraph V, any person having proper temporary custody of the automobile, as an insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

I CANCELATION. This policy may be canceled by the named insured by mailing written notice to the company stating when thereafter such cancelation shall be effective, in which case the company shall, upon demand, refund the excess of premium paid by such insured above the customary short rate premium for the expired term. This policy may be canceled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancelation shall be effective, and upon demand the company shall refund the excess of premium paid by such insured above the pro rata premium for the expired term. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy as aforesaid shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. The company's check or the check of its representative similarly mailed or delivered shall be a sufficient tender of any refund of premium due to the named insured. If required by statute in the state where this policy is issued, refund of premium due to the named insured shall be tendered with notice of cancelation when the policy is canceled by the company and refund of premium due to the named insured shall be made upon computation thereof when the policy is canceled by the named insured.

J CHANGES. No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the president, vice-president, or secretary.

K DECLARATIONS. By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

L FINANCIAL RESPONSIBILITY LAWS. Any insurance provided by this policy for bodily injury liability or property damage liability shall conform to the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising from the use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy and for any payment the company would not have been obligated to make under the provisions of this policy except for the agreement contained in this paragraph.

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary, but the policy shall not be binding upon the Company unless countersigned on the declarations page by a duly authorized representative of the Company.

DUPLICATE COPY

J OTHER INSURANCE. If the named insured has other insurance against a loss covered by this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability expressed in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

E ASSISTANCE AND COOPERATION OF THE INSURED. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and the company shall reimburse the insured for any expense, other than loss of earnings, incurred at the company's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

G SUBROGATION. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

H ASSIGNMENT. No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless cancelled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) subject otherwise to the provisions of paragraph V, any person having proper temporary custody of the automobile, as an insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

I CANCELATION. This policy may be canceled by the named insured by mailing written notice to the company stating when thereafter such cancelation shall be effective, in which case the company shall, upon demand, refund the excess of premium paid by such insured above the customary short rate premium for the expired term. This policy may be canceled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancelation shall be effective, and upon demand the company shall refund the excess of premium paid by such insured above the pro rata premium for the expired term. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy as aforesaid shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. The company's check or the check of its representative similarly mailed or delivered shall be a sufficient tender of any refund of premium due to the named insured. If required by statute in the state where this policy is issued, refund of premium due to the named insured shall be tendered with notice of cancelation when the policy is canceled by the company and refund of premium due to the named insured shall be made upon computation thereof when the policy is canceled by the named insured.

J CHANGES. No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the president, vice-president, or secretary.

K DECLARATIONS. By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

L FINANCIAL RESPONSIBILITY LAWS. Any insurance provided by this policy for bodily injury liability or property damage liability shall conform to the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising from the use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy and for any payment the company would not have been obligated to make under the provisions of this policy except for the agreement contained in this paragraph.

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary, but the policy shall not be binding upon the Company unless countersigned on the declarations page by a duly authorized representative of the Company.

DUPLICATE COPY

H. E. Remington

Secretary

B. M. Culver

President

243c-3

195

OFFICERS

BERNARD M. CULVER, President
FRANK A. CHRISTENSEN, Vice President

Vice Presidents:
HALE ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN

Secretaries:
WM. E. LAMM, JR.
FRANK E. O'BRIEN
WM. L. BATES
HAROLD K. REMINGTON

CHAS. E. SWAN, Treasurer

Assistant Secretaries:
CORNELIUS O'LEARY, JR.
WM. P. HARVEY
LEWIS A. NICHOLAS
GEORGE A. BOYD

WM. H. EMES, Comptroller

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
BENJAMIN R. C. LOW
ETHELBERT I. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

National Standard Automobile Liability Policy

DUPLICATE COPY

No. A 840618

Expiration January 1st, 1939

Insured X Y Z Co.

Premium $946.30

The Fidelity and Casualty Company of New York

"AMERICA FORE" INSURANCE AND INDEMNITY GROUP

IMPORTANT
Notice of an accident, however slight, is required.

PLEASE READ YOUR POLICY

Short Rate Cancelation Table

For Term of One Year

		Per Cent of Annual Premium
1 day		2
2 days		4
3 "		5
4 "		6
5 "		7
6 "		8
7 "		9
8 "		9
9 "		10
10 "		10
11 "		11
12 "		12
13 "		13
14 "		13
15 "		14
16 "		14
17 "		15
18 "		16
19 "		16
20 "		17
25 "		19
30 "	or one month	20
35 "		23
40 "		26
45 "		27
50 "		28
55 "		29
60 "	or two months	30
65 "		33
70 "		36
75 "		37
80 "		38
85 "		39
90 "	or three months	40
105 "		45
120 "	or four months	50
135 "		55
150 "	or five months	60
165 "		65
180 "	or six months	70
195 "		73
210 "	or seven months	75
225 "		78
240 "	or eight months	80
255 "		83
270 "	or nine months	85
285 "		88
300 "	or ten months	90
315 "		93
330 "	or eleven months	95
360 "	or twelve months	100

Period exceeding 20 days but not exceeding 25 days, to be the rate of 25 days, and so on up to one year.

243c-4

EXHIBIT 7

Maximum Benefit Accident Policy
Providing Indemnity for Bodily Injury Sustained Through Accidental Means and Resulting in Disability, Dismemberment, Loss of Sight, or Death: to the Extent Herein Provided.

DC 130555
SPOILED
No. DC 325416

The Fidelity and Casualty Company of New York

"AMERICA FORE"

(herein called the Company),

DOES HEREBY INSURE the person (herein called the Insured) named in the Copy of the Application, AGAINST— Bodily Injury sustained during the term hereinafter specified, through accidental means, and resulting directly, independently and exclusively of all other causes, in—

INSURING CLAUSE

(a) Total Disability that within thirty days from the date of the accident continuously prevents the Insured from performing each and every duty pertaining to his occupation,

(b) Partial Disability that within thirty days from the date of the accident or immediately following a period of total disability continuously prevents the Insured from performing work essential to the duties of his occupation,

(c) Dismemberment or Loss of Eyesight (as specified in Article 1) sustained within twenty-six weeks from the date of the accident; or within two hundred weeks from the date of the accident while the Insured suffers total disability as the direct result of the bodily injury causing the dismemberment or loss of eyesight,

(d) Death (as specified in Article 2);

Subject to all the provisions and limitations hereinafter contained.

DISMEMBERMENT AND LOSS OF EYESIGHT

Article 1. If the Insured suffers total disability, and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers, as the direct result of the bodily injury causing the said disability, one of the losses described in this Article, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers one of the said losses as the direct result of a bodily injury, the Company will pay the Insured in one sum according to the following schedule, and in addition, the Weekly Indemnity to the date of dismemberment or loss of eyesight but not more than [illegible] sum insured

DISMEMBERMENT AND LOSS OF EYESIGHT

Article 1. If the Insured suffers total disability, and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers, as the direct result of the bodily injury causing the said disability, one of the losses described in this Article, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers one of the said losses as the direct result of a bodily injury, the Company will pay the Insured in one sum according to the following schedule, and in addition, the Weekly Indemnity to the date of dismemberment or loss of eyesight; but not more than one sum according to the said schedule will be paid for injuries resulting from one accident:

FOR LOSS OF	*A Sum Equal to the Weekly Indemnity for*
BOTH HANDS OR BOTH FEET	600 Weeks
ONE HAND AND ONE FOOT	600 Weeks
SIGHT OF BOTH EYES	600 Weeks
EITHER HAND OR FOOT AND SIGHT OF ONE EYE	600 Weeks
ONE HAND	300 Weeks
ONE FOOT	300 Weeks
SIGHT OF ONE EYE	200 Weeks
THUMB AND INDEX FINGER OF EITHER HAND	150 Weeks

Loss shall mean: with regard to hands and feet, dismemberment by actual separation through or including the entire wrist joints or ankle joints; with regard to eyes, the irrecoverable total loss of sight; with regard to thumb and index finger, dismemberment by actual separation through or including the entire metacarpo-phalangeal joints.

DEATH

Article 2. If the Insured suffers total disability and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers death as the direct result of the bodily injury causing the said disability, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers death as the direct result of a bodily injury: the Company will pay the Beneficiary **THE PRINCIPAL SUM** and, in addition, the Weekly Indemnity for that part of the period between the date of the accident and the date of death for which no Weekly Indemnity has been paid.

TOTAL DISABILITY

Article 3. If the Insured suffers total disability, the Company will pay the Insured for the period of the said disability, not exceeding two hundred consecutive weeks. **The Weekly Indemnity**

TOTAL AND PERMANENT DISABILITY

Article 4. If the Insured suffers total disability for the period of two hundred consecutive weeks, and if at the end of the said period the Insured is totally and permanently disabled, as the direct result of the bodily injury causing the said two hundred weeks' disability, and is thereby permanently incapable of engaging in any occupation or employment for wage or profit, the Company, in addition to the Weekly Indemnity paid under Article 3, will pay the Insured an amount equal to the **WEEKLY INDEMNITY FOR 600 WEEKS**

PARTIAL DISABILITY

Article 5. If the Insured suffers partial disability, the Company will pay for a period not exceeding fifty-two consecutive weeks, as follows: **Three-Quarters the Weekly Indemnity** for that portion of the said period throughout which the Insured is wholly disabled from performing each and every duty pertaining to his occupation for three-quarters of his business time; **Half the Weekly Indemnity** for that portion of the said period throughout which the Insured is wholly disabled from performing any important duty pertaining to his occupation; **One-Quarter the Weekly Indemnity** for that portion of the said period during which the Insured is not entitled to a benefit under either of the preceding sections of this Article, and throughout which his efficiency is impaired for performing the work pertaining to his occupation. But no recovery may be had under more than one of the preceding sections of this Article for any one portion of the period of fifty-two weeks.

No payment under Articles 3, 4, and 5 will be made on account of any loss specified in Article 1, except as provided in the said Article 1.

Z43-D

FREEZING, HYDROPHOBIA, ASPHYXIATION

Article 6. Any one of the following, namely,—freezing, hydrophobia, asphyxiation—suffered through accidental means (excluding suicide, sane or insane, or any attempt thereat, sane or insane), shall be deemed a bodily injury within the meaning of this policy.

BLOOD-POISONING

Article 7. Blood-poisoning resulting directly from a bodily injury shall be deemed to be included in the said term, bodily injury.

ELECTIVE BENEFITS

Article 8. The Insured, if he so elects in writing within twenty days from the date of the accident, may take in lieu of the indemnity provided under Articles 3 and 5, indemnity in one sum according to the following schedule, provided that the Insured has sustained one of the said injuries described in the said schedule, solely through accidental means during the term of the policy, but not more than one elective benefit shall be paid for bodily injuries resulting from one accident.

SCHEDULE

On the basis of a Weekly Indemnity of $25

Proportionate amounts are payable when the Weekly Indemnity is larger or smaller

DISMEMBERMENT OF—	
Fingers, one or more entire	$160
Toes, one or more entire	200
COMPLETE DISLOCATION OF—	
Shoulder	75
Elbow	100
Wrist	120
Hip	300
Knee	160
Foot, two or more bones not toes	$160
Ankle	160
Toes, two or more	60
Fingers, two or more	60
COMPLETE FRACTURE OF—	
Skull, both tables	320
Lower jaw	80
Collar Bone	160
Pelvis	240
Thigh Shaft	$300
Leg, Tibia and Fibula	200
Knee Cap	200
Upper Arm, Humerus	160
Forearm, one or both bones	160
Ribs, two or more	100
Foot, two or more bones not toes	120
Hand, two or more bones not fingers	120
Toes, two or more	100
Fingers, two or more	100

HOSPITAL OR SANATORIUM CHARGES, OR NURSE'S FEES

Article 9. If a bodily injury for which indemnity is payable under this policy is sustained by the Insured, and if, within ninety days from the date of the accident, the said bodily injury necessarily confines the Insured in a hospital or sanatorium, or within the said period necessitates the attendance of a licensed graduate nurse, the Company (in addition to the Weekly Indemnity or any other indemnity payable for the said bodily injury) will pay the Insured for the actual expense of such hospital or sanatorium charges and nurse's fees, not exceeding

The Weekly Indemnity

for each week of the period, not exceeding fifteen weeks throughout which he is so confined or is so attended, or both, but both such confinement and attendance shall not increase the said limit.

PHYSICIAN'S OR SURGEON'S FEES FOR NON-DISABLING INJURIES

Article 10. If the Insured suffers a bodily injury that does not disable him or entitle him to any indemnity under any other provision of this policy, but on account of said bodily injury he receives immediate treatment by a legally qualified physician or surgeon, excluding dental treatment not required by a bodily injury, the Company will reimburse the Insured for the cost thereof, upon satisfactory proof from the attending physician or surgeon, not exceeding an amount equal to the

Weekly Indemnity for One Week

SURGEON'S FEES

Article 11. If a bodily injury, for which indemnity is payable under this policy, is suffered by the Insured, and if on account of the said bodily injury, and within ninety days from the date of the accident, the Insured undergoes a surgical operation named in the following schedule the Company (in addition to the Weekly Indemnity or any

SURGEON'S FEES

Article 11. If a bodily injury, for which indemnity is payable under this policy, is suffered by the Insured, and if on account of the said bodily injury, and within ninety days from the date of the accident, the Insured undergoes a surgical operation named in the following schedule, the Company (in addition to the Weekly Indemnity or any other indemnity payable for said bodily injury), will pay the Insured the sum fixed for such operation according to the said schedule; provided that if the Insured undergoes more than one such surgical operation on account of bodily injuries resulting from one accident, he must elect for which operation payment shall be made; and not more than one of the said amounts payable under the said schedule shall be payable for bodily injuries resulting from one accident, nor shall any amount be payable on account of a surgical operation required by a bodily condition that existed prior to the date of the policy.

SCHEDULE

On the basis of a Weekly Indemnity of $25

Proportionate amounts are payable when the Weekly Indemnity is larger or smaller

AMPUTATION OF—

Foot, Hand or Forearm	$ 25
Leg, at or below knee	50
Arm, above elbow	50
Thigh	100
Fingers, one or more entire	10
Toes, one or more entire	25

REDUCTION OF DISLOCATION OF—

Shoulder, Elbow, Hip, Knee or Ankle	25
Wrist or Jaw	15
Fingers, one or more	10

EXCISION OF—

Shoulder, Hip, or Knee Joint	100
Elbow, Wrist, or Ankle Joint	50

EYE, EAR OR NOSE—

Any cutting operations	10

LAPAROTOMY (opening of the abdominal cavity) for treatment or diagnosis $100

INCISION FOR—

Synovitis (inflammation of the lining membrane of a joint)	25

INJECTION OF—

Anti-tetanic serum into frontal lobe of brain	100

SEQUESTROTOMY (removal of dead bone) 35

REDUCTION OF FRACTURE OF—

Nose, Lower Jaw, Collar Bone, or Shoulder Blade	25
Breast Bone	10
Rib or Ribs	$ 10
Upper Arm	35
Forearm, one or both bones	25
Wrist or Hand	15
Fingers, one or more	10
Pelvis or Sacrum, any bones of	50
Coccyx	10
Thigh	75
Knee Cap	50
Leg Bones, one or both	50
Foot, two or more bones not toes	15
Toes, one or more	10
Spine or Spinal Cord—Operation with removal of portion of vertebra	100

HYDROPHOBIA—Pasteur Treatment 50

TETANUS (lockjaw)—

Injection of antitoxin	5

GUNSHOT WOUNDS—Removal of shot or bullet 25

SKULL TREPHINING for fracture 100

SUTURING WOUNDS 5

INDEMNITY FOR AERIAL TRAVEL INJURIES

Article 12. **If the Insured sustains a bodily injury within the terms of this policy while the Insured is riding as a passenger in or on a licensed passenger aeroplane or dirigible operated by an incorporated passenger carrier, while such aeroplane or dirigible is flown on a published schedule by a licensed passenger pilot, over a definitely established regular passenger route of such carrier, and between definitely established airports; the Company will pay any indemnity to which the Insured may be entitled under the foregoing Articles, as the result of the said bodily injury; provided that the indemnity payable under Article 1 is limited to half the amounts payable in accordance with the terms of the said Article, and, provided further, that this Article does not cover bodily injuries or death sustained while the Insured is acting as a pilot or mechanic or as member of crew of any aeroplane or dirigible, nor sustained by the Insured in any military or naval aircraft, nor sustained under any other conditions than those hereinbefore specified as covered.**

IDENTIFICATION

Article 13. If the Insured by reason of injury or illness is physically unable to communicate with relatives or friends, the Company, upon receipt of a telegram or other message giving the number of this policy, will immediately transmit to them any information respecting him and will defray all expenses, not exceeding the sum of One Hundred Dollars, necessary to put the Insured in their care.

Standard Provisions

1. **This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.**

If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

4. Written notice of injury on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury. In event of accidental death immediate notice thereof must be given to the Company.

5. Such notice given by or in behalf of the Insured or Beneficiary, as the case may be, to the Company at its home office in New York City or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

8. The Company shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the Insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each thirty days during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the Insured is payable to the Beneficiary if surviving the Insured, and otherwise to the estate of the Insured. All other indemnities of this policy are payable to the Insured.

12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

13. Consent of the Beneficiary shall not be requisite to surrender or assignment of this policy, or to change of Beneficiary, or to any other changes in the policy.

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

General Provisions

1. If the Insured [illegible]

in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

General Provisions

1. If the Insured sustains any one of the losses described in Article 1, the policy shall immediately terminate except as to the indemnity payable for the said loss under the said Article 1, and upon the payment of the said indemnity the policy shall be surrendered to the Company.

2. No recovery shall be had under more than one Article of this policy on account of bodily injuries the result of one accident except as specifically provided in Articles 1, 2, 4, 5, 9, and 11.

3. Any failure to comply with the provisions of this policy shall render invalid any claim under this policy.

4. No change of Beneficiary and no assignment of interest under this policy shall bind the Company unless the written consent of the Company is endorsed hereon by the President, Vice-president, Secretary, or one of the Assistant Secretaries of the Company. Neither notice given to nor the knowledge of any agent or any other person, whether received or acquired before or after the date of this policy, shall be held to waive any of the terms or provisions or statements of this policy, or to preclude the Company from asserting any defense under said terms, provisions, and statements, unless set forth in an endorsement added hereto and signed by one of the said officers.

5. The following terms, viz., bodily injury, total disability, partial disability, dismemberment, loss of eyesight, and death, shall be construed and understood as those terms are defined in the Insuring Clause.

6. This policy does not cover suicide, sane or insane, nor any attempt thereat, sane or insane, nor bodily injury or death (1) sustained by the Insured while in, or in consequence of having been in, any aircraft, or while participating in, or in consequence of having participated in, aeronautics, except as provided in Article 12; (2) sustained by the Insured while engaged in military or naval service in time of war; (3) caused by war or acts of countries at war.

7. This policy is issued in consideration of the premium charged therefor and of the statements made in the application, a copy of which is endorsed upon and is hereby made a part of this contract. The falsity of any statement in the application for this policy materially affecting either the acceptance of the risk or the hazard assumed hereunder, or made with intent to deceive shall bar all right to recovery under this policy. No provision of the charter or by-laws of the Company not included herein shall avoid the policy or be used in evidence in any legal proceeding hereunder.

8. Subject to all the policy provisions and limitations and to the consent of the Company, this policy may be renewed upon payment of the premium required.

9. The Insured's occupation is Salesman - Traveling & Office

10. The duties of the Insured's occupation are fully described as follows:
Selling Tires and Accessories to Dealers

11. The Insured's occupation is classed by the Company as A

12. The premium for the t rm of this policy is Forty One and 20/100 ---------- **Dollars ($** 41.20 **).**

13. This policy is dated the 29th **day of** January **, 193** 8 **, at noon, standard time, at the place of the Insured's address set forth in the Copy of the Application.**

14. The term of this policy is Twelve **months from noon, standard time, of the day that this policy is dated.**

15. The Principal Sum of this policy is
Four Thousand and 00/100 **--dollars.**
(Do not use figures)

16. The Weekly Indemnity of this policy is
Forty and 00/100 ---- **dollars a week.**
(Do not use figures)

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary; but the policy shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

SAMPLE

Secretary.

SAMPLE

President.

Countersigned by John Doe

Authorized Representative.

AC 3211 Standard

243d-2

Exhibit 7

The Fidelity and Casualty Company of New York

"America Fore"

Home Office New York, N.Y.

Maximum Benefit Accident Policy

DC 160555

Sample

No. DC 225116

Providing Indemnity for Bodily Injury Sustained Through Accidental Means and Resulting in Disability, Dismemberment, Loss of Sight, or Death: to the Extent Herein Provided.

ISSUED TO R. P. Rupprecht

January 29, 1938

PREMIUM $ 41.20

OFFICERS

BERNARD M. CULVER, President

FRANK A. CHRISTENSEN, Vice President

HALE ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN
— Vice Presidents

LAMAR HILL, Vice President and General Counsel

WILLIAM E. LAMM, JR.
FRANK E. O'BRIEN
W. L. BATES
HAROLD K. REMINGTON
— Secretaries

CHAS. E. SWAN, Treasurer

WILLIAM P. HARVEY
LEWIS A. NICHOLAS
CORNELIUS O'LEARY, JR.
— Assistant Secretaries

WM. H. EMES, Auditor

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
BENJAMIN R. C. LOW
ETHELBERT I. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

COPY OF APPLICATION TO THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

I hereby apply for Maximum Benefit Accident policy of insurance to be based upon the following statements:

1. What is your full name? Robert Philip Rupprecht Birthplace? Marysville, Ohio Birthdate? March 8, 1913
   Age? 24 Height? 5 ft. 11 ins. Weight? 182 lbs. Sex? M. Race? W.
2. Residence P. O. Address? Wakefield Apts., Fredericksburg, Virginia
   (Street No. / Street / Town / County / State)
3. Your beneficiary's name? Winifred Rupprecht Age? 24 Relationship? Wife Address? Same
4. Your firm's or employer's name? Firestone Tire & Rubber Co.
   Business? Tire & Rubber Address? 2001 Oak Baltimore, Md.
   (Street No. / Street / Town / County / State)
5. Your occupation? Salesman - Traveling & Office
6. A full description of the duties of your occupation? Selling Tire and Accessories to Dealers
7. Does your weekly income exceed the gross amount of Weekly Indemnity under all policies carried by you? Yes
8. What Accident or Health Insurance have you in this Company? None
9. What Accident or Health Insurance have you of any other Insurer? None
10. What Accident, Health or Life Insurance issued to you has been cancelled by this or any other Insurer? None
11. What renewals of such insurance have been refused? None
12. What applications ever made by you for such insurance have been declined? None
13. What applications for such insurance have you made concerning which you have not been notified of the action taken thereon?
14. What indemnity have you received for injuries or illness? None
15. Have you in contemplation any special journey? No
16. Are your habits of life correct and temperate? Yes
17. Are you in sound condition mentally and physically? Yes
18. Have you any mental or physical defect not specified above? No
19. Have you received medical or surgical advice or treatment at any time during the last five years or have you been disabled at any time during that period? DATE OF ADVICE, TREATMENT, OR DISABILITY? NATURE? DURATION?

Carbuncle - Non-disabling - One week 12/37

This application is made by the applicant on the 29th day of January, 1938

R.P. Rupprecht Applicant

AC 3211 Standard

243d-3

[fol. 244] Q. I believe that in the cases of each of these exhibits, Plaintiffs' Exhibits 4, 5 and 6, there is coverage in more than one state, but that such is not the case in Plaintiffs' Exhibit No. 7; is that correct?

A. That is the accident policy?

Q. Yes.

A. That is correct.

[fol. 245] Q. Are these forms which your company uses substantially the same as are used in like situations where like coverage is desired by other casualty insurance and surety companies?

A. I think these policies indicate in a general way the character of policies issued by the companies generally.

Q. In paragraph 7 of the complaint in this action, reference was made to certain contracts issued in the fiscal year 1937-1938 by your company. At my request, have you ascertained that the total number of contracts there involved was 172?

A. Yes.

Q. As to the complete details of the amount of premium, amount of commission, in what city the producer's commission was paid, and perhaps other things, I believe you are not able to talk as to 22 out of these 172 cases; is that correct?

A. That is correct.

Q. As to the other 150 cases, I understand that the commission paid was between $1,001 and $2,000 in one case, between $501 and $1,000 in one case, between $251 and $500 in three cases, between $101 and $250 in nine cases, between $51 and $100 in seven cases, between $26 and $50 in 19 cases, between $11 and $25 in 20 cases, and $10 or less in 90 cases. Is that correct?

A. That is correct.

Q. Those amounts to which I have referred relate to the Virginia part of the coverage alone, is that correct?

A. That is correct.

[fol. 246] Q. Am I correct in saying that the commission on the Virginia coverage in these 150 cases varied from two cents in one case to $1,595.95 in another case?

A. Correct.

Q. In the two-cent case I believe the total premium was $15,637.69 for coverage in twelve states, of which only eight

cents of that premium was for Virginia coverage. Is that correct?

A. That is correct.

Q. In the $1,595.95 case I believe the total premium was $47,223.62 covering fourteen states. Is that correct?

A. That is correct.

Q. And the first case was a public liability contract, and the second case was an automobile liability contract. Is that correct?

A. That is correct.

Q. In one of the cases to which I have referred where the Virginia Commission was between $501 and $1000, I believe the exact amount of the commission on Virginia coverage was $689.30, that being an automobile liability policy covering in 26 states, on which the total premium was $158,072.93 and the Virginia part of the premium only a fractional amount of that total premium; is that correct?

A. That is correct.

Cross-examination.

By Mr. Staples:

Q. Are those commissions uniform as among all of the [fol. 247] agents, all resident agents, we will say, and all resident general agents?

A. That is on business which they produce in Virginia," if we were to make a contract with the Virginia agent.

Q. You pay them all the same rate of commissions?

A. There are three classes of agents under the acquisition cost rules. There is a local agent who receives the lowest rate of commission; the regional agent, who receives an intermediary commission; and the general agent, who receives the maximum commission. We are limited as to the number of regional and general agents that we may have in the State of Virginia.

Q. Who limits it?

A. The Acquisition Cost Conference.

Q. Is the rate of commission that you pay to each general agent in Virginia, the same?

A. Yes.

Q. Does your company pay the same rate of commissions to all agents falling within the same class?

A. Yes, if in the same state.

THEODORE H. HAAS, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. Mr. Haas, I believe you are a licensed attorney-at-law in New York State, a member of the New York Bar?

A. Yes, sir.

[fol. 248] Q. You are connected with the Association of Casualty and Surety Executives?

A. Yes, sir.

Q. What is your capacity there?

A. I am assistant to the Counsel, bearing the title Assistant Attorney, and am in charge of certain phases of the Association's work. Among other things, it has been my duty during the last few years to follow carefully the laws relating to resident agency so far as such laws affect the casualty and surety insurance business.

Q. Will you please state what states there are, including North Carolina, or regulations promulgated under the laws of what states which in your opinion require that the agents who countersign contracts covering but not produced in Virginia receive therefor the usual customary commissions for the production of such contracts and to retain at least 50 per cent. thereof.

Q. I will add to that question this, that I want you to bring out in your answer what states are within that class acting in the light of your own opinion, but also bring out what states are in that class according to official construction and enforcement policy, in other words, to develop the thing for the information of the court in an unbiased way, fairly and accurately.

A. Based upon a reading of many rulings, and during the last few days an examination of the rulings and interpreta-[fol. 249] tions which have been handed down by the Attorney Generals' offices, Insurance Commissioners and other comparable officials in the various states by whatever name designated; based upon an examination of the Weekly Underwriter, which I believe to be the official organ of the National Conference of Insurance Commissioners and a compiler of such rulings and interpretations for many, many years; and a study of the statutes as well as a knowledge of important decisions of the Supreme Courts

and some other lower courts of the states; based also upon the fact that I have been in close touch with problems arising out of division of commissions under resident agency laws of the various states in the United States affecting the casualty and surety business and have seen numerous communications raising problems from our member companies as well as have answered numerous telephone inquiries regarding them; it is my opinion that the States of Louisiana, Mississippi and North Carolina through rulings have raised problems comparable to that involved in the Virginia Resident Agency Law regarding division of commissions, which have been troublesome to our member companies in the stock casualty and surety business.

In the State of Louisiana by a construction of Act 348 and particularly Sections 2 and 6, Laws of 1938, insurance contracts with certain exceptions including personal accident and health insurance on risks on property or insurable activities or interests located in the State of Louisiana shall be issued and countersigned by licensed resident agents who [fol. 250] shall receive the usual commission, and the resident agent is prohibited from paying more than 50 per cent. to an agent or broker authorized in another state.

By the subsequent statute, Act 353, Laws of the State of Louisiana of 1938, which contains the usual or fairly common repealer clause of inconsistent provisions, a resident agent is permitted to divide the commission with an agent of a state or country which permits the payment of brokerage due and division of commissions with a licensed agent of Louisiana in a similar manner, provided such payment of brokerage or commission is made in accordance with such reasonable rules and regulations as may be promulgated by the State Casualty and Surety Rating Commission.

Under this power the Rating Commission has ruled that where under the terms of Act 353 an agent may divide his commission or brokerage with an agent of another state or country, such Louisiana agent may pay to such agent such brokerage or commission not exceeding 50 per cent. of the usual local agent's commission as determined by the Acquisition Cost Conference.

In the State of Mississippi all insurance except life upon persons or property in the state must be approved, countersigned or approved, by a resident agent who shall receive the full commission. Under regulations governing

payment of commissions and/or brokerage by all insurance companies with certain exceptions and/or their local agents promulgated by the Commissioner of Insurance pursuant to [fol. 251] House Bill 546, enacted by the Mississippi Legislature in 1938, Laws of 1938, agents in the state will be permitted to pay an amount not to exceed 50 per cent. of the regular commission to all agents of other states where said agent has participated, so to speak, in obtaining or writing the insurance upon which said brokerage or commission is paid.

There is another provision in the ruling which forbids division of commissions with the States of Arizona, Montana, Oklahoma, Rhode Island, South Dakota, Washington, Wisconsin and Wyoming, for the stated reason that "these said states will not permit division with the agents of this state".

May I point out that there is serious question as to the legal validity of these rulings in respect to whether such power can be constitutionally delegated as a delegation of legislative power and whether the exercise of these powers in Louisiana and Mississippi is arbitrary, and other legal questions.

The State of North Carolina provides by statute that all business done in the State by certain enumerated classes of companies shall be by regular agents or through applications of such agents and all policies must be countersigned by such agents who may pay a maximum of 50 per cent. of the regular commission allowed on premiums collected on such business to a licensed non-resident broker. In a circular letter dated April 24, 1924, the Insurance Commissioner of that State further interpreted this law so that in his opinion the countersigning resident agent must receive the full and usual commission allowed on such business and he may in turn allow to a licensed non-resident [fol. 252] broker not more than 50 per cent. of such commission where the agent is satisfied that the business is controlled by a bona fide licensed non-resident broker and that the Department of Insurance of North Carolina would insist that the resident agent get at least 50 per cent. of the usual commission.

It should be noted that these three states thus dealt with the problem of a non-resident agent or broker producing business on a risk or property in the state. The wordings of the laws vary so far as the division of commission with

a resident agent was concerned. It should also be noted that in respect to the coverage of an application to casualty and surety business, some of these laws may not be as broad as the Virginia statute so far as the division of commission point is concerned. For example, North Carolina mentions fidelity insurance companies but does not mention surety companies, so that miscellaneous surety lines seem not to be covered. It should also be noted that the word "property" has doubtful application to most casualty and surety lines.

Q. Do you want to mention five states other than Virginia, in answer to my original question as to what states have laws or regulations requiring agents to countersign contracts covering but not produced in Virginia, and to retain at least 50 per cent. thereof? Am I to understand in your opinion it is a fact that so far as the laws and regulations and rulings and enforcement policies of the other [fol. 253] states than these five are concerned, such requirement is not made?

A. Yes, sir. In fact, I might venture the opinion that there are really three states—the first three enumerated, Louisiana, Mississippi and North Carolina—in addition to Virginia, in which the situation, so far as enforcement is concerned, is really comparable. I have merely cited the State of Montana and the State of South Dakota in order to indicate possibilities of difficulty for the casualty and surety business in the future. At the present time I believe that such business is being transacted without the difficulty involved in our division of commissions question and the division of commissions statutory requirement of the State of Virginia. At least it seems as though our member companies are able to conduct their business along the usual lines in those states.

Let me call attention to the fact that commissions which might be termed producing commissions are also restricted so far as their division is concerned between agents in the States of Georgia, South Carolina, Alabama, New Mexico and Oklahoma, by rulings or statutory provisions. There are no difficulties, so far as I have been able to ascertain, comparable to those in the other states discussed by me, and this is probably due to the fact that the administrative authority in these states have interpreted their laws so as

to limit their application to transactions involving production within the jurisdiction of the state which would not involve an extra territorial application of the law to the production of business involving a risk or property in the [fol. 254] state by a non-resident agent or broker all of whose activity was conducted outside of and not within the state of coverage.

A. (Continuing.) All of my testimony should be interpreted with the understanding that when I speak of production outside of a state, or non-resident production, or production by a non-resident agent or broker, I have reference to cases where the producer does not come inside of the state of coverage at all.

Cross-examination.

By Mr. Staples:

Q. Mr. Haas, how many of the states require countersignatures of policies by residents of the state?

A. Almost all of the states have some provision concerning countersignature.

Recross-examination.

By Mr. Staples:

Q. Then the only ground that you feel that the countersignature law would be applicable or have value to a state where the business is produced outside, is with reference to its taxing system, as you stated some time ago?

A. No. I believe I mentioned about fly-by-night companies also, and disreputable companies.

[fol. 255] Q. It might also, might it not, serve to inform the assured of the fact that the company in which he receives his policy is a company which has been licensed in the state of coverage, in other words, the fact that the signature is countersigned by a resident agent of Virginia and so shows on its face?

A. I do not think that that necessarily is an indication of the admittance of the company in the state.

Q. You do not think so?

A. No.

Mr. Staples: That is all.

[fol. 256] LEWIS C. ADAIR, a witness called on behalf of the plaintiffs and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Adair, I believe you are one of the plaintiffs in this action and the Richmond Branch Manager of a plaintiff company, Fidelity & Casualty Company of New York: is that correct?

A. It is. As a matter of fact, I am also Manager of the Atlanta office of the company.

Q. Over what territory do you perform functions for your company?

A. The six states comprising what is generally known as the Southeastern Territory, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, and I still have a small section of southern West Virginia.

Q. I ask you to state the extent of your identification with the Virginia community in the casualty and surety business.

A. I have been associated with the Richmond office of the Fidelity & Casualty Company in one capacity or another since July, 1904, which will be thirty-five years the first of July of this year.

Q. During what part of that period were all of your activities confined to Virginia?

[fol. 257] A. At no time were they wholly confined to Virginia. Until the first of November, 1933, the activities of the Richmond office were confined to Virginia, North Carolina, and southern West Virginia. In 1933 I was also given supervision over the Atlantic office which covers the four additional states and since that time I have divided my time between the two offices and spread myself over the six states.

Q. Do you know of their practices in respect of countersignature activities?

A. I have specific information as respects my own company and, from contact with other company managers, I think I have fairly definite ideas with respect to the general practice.

Q. Please say when an agent countersigns a contract, not produced or written by himself but at the request of the home office of the company or of an authority in another production territory, what does he do, taking it up from the moment when he sees the letter on his desk asking him to do the countersigning?

A. It has been my experience that as a general proposition the agent simply countersigns the policy and returns it unless, as a matter of interest, something prompts him to look at the policy.

[fol. 258] Q. With what object would he have that interest to look at it?

A. To see whether or not there might possibly be any new forms or methods of cover that might be useful to him in handling his own business.

Q. How many casualty and surety contracts, as a guess, would you say you have countersigned in your lifetime?

A. That would be hard to say because I have been countersigning policies for at least twenty-five years, but during the past year it would average something like 100 a month.

Q. Does the countersigning agent ever write the policy himself, he not being either the producer of the policy or associated with its production in the sense of receiving any part of the production commission?

A. I would say the countersigning agent never issues the policy in his office unless he is to be associated with the out-of-state producing agent and participates in the commission.

Q. Am I right then, if his sole function is that of affixing the countersignature to the policy, he never writes the policy?

A. He does not write the policy if his sole function is to countersign it.

Q. Having reference to his countersigning function only is there usually provision made by the company or the for-

[fol. 259] warding authority for him to retain a copy of the original contract and to receive copies of all contract changes?

A. If the agent's sole function is countersigning, he is never sent any additional copies or daily reports or endorsements for retention in his office.

Q. Will you please say whether the Virginia agent, countersigning at the request of an authority in another state, has means by which to discover whether the name of the assured is correctly stated or whether the coverage contained in the policy is as desired by the assured?

A. I would say not with definiteness. As to the name of the assured, very frequently the details or the legal name of the assured may be entirely different or vary considerably from a name by which the plant is locally known and, as respects the coverage, as often as not the agent would

not be able to tell with definiteness whether the coverage was wholly accurate and complete unless he had means of having detailed knowledge of the operations covered.

Q. Would those means exist on the face of the policy?

A. Not necessarily.

Q. Would he be able to determine ordinarily, in the case of policies so submitted for countersignature, whether the premium rates stated there were correct?

[fol. 260] A. As often as not he would not be able to do so unless he had inquired of the company as to any experience or equity rates which might have been published for the risk. He could, of course, check rates against manual but on large risks, more often than not, the rates for individual risks vary from the published rates for average risks of that type.

Q. Suppose there should be inadvertently attached to the contract, or inadvertently omitted to be attached thereto, riders and special provisions; could he tell from looking at it whether they were advertent or inadvertent?

A. I don't see how he possibly could.

Q. Who has the responsibility for all of these matters as to which, from your answers, I judge the countersigning agent could not efficiently undertake to exercise responsibility?

A. The agent who actually has contact with the assured and takes from the assured the information and order for the policy.

Q. Where a contract is produced in another state than Virginia and countersigned in Virginia, who usually spends the greater amount of time in connection with the placing of that contract, that is to say, its procurement, writing, countersigning, delivery to the assured—the Virginia countersigner or the non-resident producer?

A. The non-resident producer is the man who works up and whips the case into shape and the Virginia counter-[fol. 261] signer merely countersigns. It is a foregone conclusion that he will probably put infinitely more time on it than the man who merely countersigns.

Q. Which one of those two in that situation needs to have more information as to the casualty insurance or surety business in order properly to discharge his duties?

A. The man who procures the business.

Q. Is that discrepancy large or small?

A. For a substantial risk it would be very large.

Q. Which of the two incurs the greater measure of responsibility?

A. The man who procures the business.

Q. Does the Virginia countersigner in that situation ever form any contact with the assured in the course of performing his countersigning service?

A. No.

Q. Would it have any effect on the difficulty of getting these contracts, which a producer outside of Virginia procures to cover in Virginia, countersigned by a Virginia agent, if the Virginia agent had to make certain, before he furnished the countersignature, that the proposed insurance contract was bona fide and that there was no intention to discriminate or to rebate or to give the insurance without charging any premium for it?

A. It necessarily would as it would place on the countersigning agent responsibilities and require of him the ex-[fol. 262] penditure of time and effort which is not required if his sole function is to countersign.

Q. It was suggested in a deposition by Mr. McNamara that the branch offices of the casualty insurance and surety companies had regulations for the operation of the branch offices, which regulations were promulgaged by the companies and from time to time supplemented and amended by them. Do these regulations state the duties and responsibilities of the branch manager personally?

A. They do not.

Q. Please say what are your duties and responsibilities as Richmond Branch Manager of your company?

A. In our organization the manager's duties are primarily production. He is the head of the company's production organization in his territory, which includes the direction of the special agents in the territory, traveling and contacting agents themselves, and doing general work of that nature, calculated to build up the company's business in the territory, either through the production of business through existing agencies or the production of business through the acquisition of new agency plants.

Q. Is it true or false that the underwriter in your office has leave to submit doubtful underwriting questions to you [fol. 263] and is ordinarily guided by your views?

A. It is true that he does.

Q. Do you have anything to do with the claims or inspection services of your company?

A. Both the claims division and engineering division are under direct control of the engineering and claims divisions in the home office.

Q. Do you have any responsibility for auditing or accounting?

A. Auditing and accounting are also both directly under those respective departments in the home office.

Q. Is the measure of your success as a branch manager, according to the standards applied by the company, affected by the volume of contracts written solely in your territory?

A. The manager's success is judged by two standards—the underwriting results on his business, that is whether it is carried at a profit or a loss, and the nearness of his approach to keeping his overall expense within a figure determined by applying the total allowable acquisition cost to his volume and his actual expenses.

Q. Is the company concerned with whether the volume is large or small? In other words, would you be considered just as successful in the Virginia territory if you had $100,000 of premiums per year as with your present volume of [fol. 264] around $500,000 per year?

A. A volume of $100,000 a year would not support the office. The company is, of course, interested in the extent of the volume. They naturally are not willing for a man to go volume crazy to the extent that he writes all sorts of business, without regard to the underwriting results but, at the same time, he would probably be in as deep water if he was so careful of his underwriting results that he got the volume down to a point where it wouldn't carry his organization.

Q. Suppose he got the volume down to a point where it wouldn't carry his organization, as a result of being unpleasant to the sources of business in his personal contacts with them, or not showing the proper interest in their affairs, not giving them what they regarded as a proper amount of time and due consideration when they undertook to bring up their insurance problems with him and discuss them, would that similarly decrease the esteem in which he is held by his company?

A. The result would be the same. He must produce what is a reasonably satisfactory volume from his territory or he is doing an unsatisfactory job.

Q. It has been suggested, that because you are compensated by salary you do not have to bother as much as a commission man would about keeping the good will of the as-
[fol. 265] sureds. Will you please say to what extent you think this suggestion is a sound one, if at all, and compare the extent to which the good will of assureds is material to a branch manager and the extent to which it is material to a general agent?

A. I would say that there is very little difference because, after all, good will is essential to success in our business and without it you can't expect to enlarge your business or even hold a present satisfactory volume. As a matter of fact, in my own particular territory I have personal contact with the majority of the most important accounts on the books of our most important agents. So I have had the opportunity to build up some good will for the company and the agency through those contacts and I don't believe that I would any more think of doing anything that would jeopardize that good will, or could afford to do anything that would jeopardize that good will, any more than could the general agents who might be handling the same account.

Q. Have you ever been brought in contact with those assureds, at the request of the agents in your territory, to confer with them or to advise them?

A. Very frequently. Within the past thirty days I have made two trips at the request of agents to, in each case, call on the assureds who represented the most important ac-
[fol. 266] counts that they had in their respective offices because they felt that they were in danger of losing those accounts and that I might be of assistance to them in retaining them. As a matter of fact, a considerable part of my time is devoted to efforts of that sort.

Q. Are you ever called on by your agents to assist them in getting the final assent of an assured to take a line of business with your company and help them put the job over and deliver the contracts?

A. That is a very important part of my job.

Q. And you mean you are personally present at those conferences at times and actually close the deals?

A. Yes.

Q. Is it also a part of your duty, with the assistance of your clerical force, to determine the contents of policy pro-

visions and assist in getting the rates determined and to generally take part in the underwriting?

A. Yes.

Q. What part of the business of a casualty insurance and surety general agent, aside from the countersigning which the 1938 Virginia Law prohibited you from continuing to do, is it, if any, that you don't do now?

A. Substantially nothing.

[fol. 267] Q. You don't know of anything that a general agent does that you don't do?

A. No.

Q. Do you ever have occasions, when the claim people of your company are adjusting a claim and a question arises as to the liberality of the policy of adjustment, that you are called on to take part in the discussion of it and advise with them?

A. Very frequently.

Q. Would you say that in those situations you are expected to take an attitude more nearly approaching that of the agent in the field or more nearly approaching that of a person disassociated from the salesmanship end?

A. I am expected to approach it with the attitude that would be expected of the head of the production division, to consider the possible effects of what may be done on production.

Q. Speaking generally, is the outline you have given of your duties and attitude and responsibilities substantially in accord with the way you would outline the attitude and duties and responsibilities of other branch managers in Virginia?

A. That is my impression.

Q. I notice in Plaintiff's Exhibit No. 3-A that there is no authorization, with reference to the sur-ty bonds, for the [fol. 268] execution of bonds. Where an agent has authority to execute surety bonds, in what form is the authority conferred?

A. In a general power of attorney which is, of course, a separate and distinct instrument from his contract as agent.

Q. Is that practice of having a power of attorney for the execution of surety bonds a practice with other companies than your own?

A. Yes.

(Mr. Christian and Mr. Staples agreed that Mr. Christian might put in evidence, as Plaintiffs' Exhibit No. 8, what purports to be the form of agency agreement currently used by the Travelers Insurance Company, with a rider attached applicable to certain Virginia commissions, and later hand to the notary public, to identify as Plaintiff's Exhibits Nos. 9 and 9-A, a general agency contract form and a local agency contract form of Maryland Casualty Company, without witnesses being presented to identify the forms as so used.

Q. Will you say the usual thing for mere agent producers, as distinguished from general agents or branch managers, is to have authority, either express or implied, to bind their companies on casualty lines?

A. Yes.

[fol. 269] Q. Do agent producers usually report to the general agent or branch office or do they usually report to the home office of their company?

A. With branch office companies they almost invariably report to a branch office. With general agency companies they are as likely to report direct to the home office as to a general agent because there are comparatively few general agents who undertake to supervise and develop territories which, of course, means to plant and develop local agents.

Q. Do agent producers usually have their office space and services and supplies furnished to them by one or more companies so that their commissions represent net earnings to them or do they usually have to pay their own expenses of that sort out of their commissions?

A. They are quite generally furnished with their supplies by their various companies, including stationery and that sort of thing. Their office rent and that sort of expense comes out of their own earnings. Their commissions are not net earnings.

Q. I believe, however, that the class referred to as office agents in Plaintiffs' Exhibits 1 and 2, consisting of the acquisition cost rules, do have these services and supplies furnished to them by the companies, do they not?

[fol. 270] A. Quite generally the office agents' commissions are net earnings and subject to little, if any, expense.

Q. Among the various companies there is a considerable variation in the proportion of agent producers who are on their own as local agents and who are office agents, as, for

instance, in the case of your company here in Richmond, I believe, you only have one office agent, whereas the Travelers has many; is that correct?

A. That is correct. There are only two companies, so far as I know, operating in Virginia, who have any extensive office agent plants and they are the Travelers and the Ætna.

Q. If an agent producer reports to a branch office or general agent, is my understanding correct that the branch office or general agent may furnish him with an office and office services and supplies and then again may not; is that correct?

A. Local agents, as distinguished from office agents, are, so far as I know, not furnished with office space and that sort of thing.

Q. In comparing the branch manager to a general agent, you have indicated that there is a substantial identity of duties and functions and responsibilities. Is the same true as between the branch manager and the mere agent producer or do you find sharp differences of duties, functions [fol. 271] and responsibilities between the branch manager and agent producer?

A. There is a very considerable difference. Almost invariably your agent producer is doing a direct business for his own account. The great majority of the agent producers are located in the smaller cities and towns. They are there working solely with their own customers and prospective customers. The branch manager is working largely through agent producers of that type as distinguished from working directly with the insurance public for his own account.

Q. I believe it is a fact that Davenport Insurance Corporation and the Charles Lunsford Sons Roanoke agency are your leading general agents in Virginia, are they not?

A. They are.

Q. Are those agencies general agencies, in the sense in which you have compared their functions and duties and responsibilities with those of branch managers?

A. To a degree. Both of those general agencies have some few sub-agents. Neither of them, however, assume responsibility for the development and production of business from any territorial area for which they are responsible.

Q. Do you mean for which they are responsible to your company alone?

A. To my company alone.

Q. Do you know how many casualty and surety companies Davenport Insurance Corporation represents?

[fol. 272] A. I know at least five. How many more I could not say.

Q. Are those four others than yourselves companies writing the same business as you do, generally speaking?

A. Yes, with the exception of the National Surety Corporation which does not write all of the casualty lines.

Q. How about the Lunsford agency? Does it represent more than one casualty and surety company?

A. They represent at least five.

Q. Having reference to so-called general agents in Virginia, and without particular reference to your two which we have mentioned, is it more frequently the case that they represent, in the large cities, more than one company or more frequently the case, in your observation in the larger cities, that they represent only one competing company?

A. The quite general practice now is to represent more than one company. The agency which represents one casualty and surety company exclusively is now more the exception than the rule.

Q. Do these so-called general agents have any definite territory where they represent more than one company?

A. Our own practice is to show the agent's territory as the given city in which they are located, and vicinity. I [fol. 273] am not in position to say just what the practice of other companies may be in that respect.

Q. But their rights in the territory under your practice are never exclusive?

A. Never exclusive unless it be specific agreement and we have no such case in this state.

Q. Do these so-called general agents as a rule write business only like a branch manager does, by way of assisting producing agents or assisting brokers, or do they do what I believe Mr. Staples called on one occasion direct writing?

A. I, of course, am not in a position to make a definite statement as to the percentage of the average general agent's business which would be direct business and the percentage that comes to him from brokers or sub-agents, but there is hardly any question about the fact that in substan-

tially every case in the state the great bulk of the business would be direct business excepting in the case of the three agencies in the state which operate on a truly general agency basis. That is the bulk of their effort, to develop territory and develop sub-agents. So far as I know, however, there are only three such agents in the state.

Q. Then the main difference between these other so-called, but not real, general agents and the agent producer is [fol. 274] simply a matter of commissions, is it not?

A. A matter of commissions and the so-called general agency is almost always located in a larger city so that they have a larger volume and a more extensive organization.

Q. In an answer that Mr. Nichols gave on Page 10 of his deposition to the question of whether a general agent has the same powers and duties as to underwriting as a branch manager, he says that he would say that the general agent, to almost the same degree, has the same powers. Having reference particularly to the Virginia situation and comparing underwriting powers of general agents and branch managers, should that word "almost" be in there or are they identical, according to your observation?

A. I would say that insofar as underwriting is concerned, there is no difference, with the probability being that the general agent might be justified in taking a little more latitude than a branch manager might be willing to take. Both of them, however, are subject to review by the home office.

Q. On page 15 Mr. Nichols indicated that if an authority outside of a particular state requests the agent of a particular state to countersign a contract, and if that authority is on a list in the possession of the countersigning agent, of those people who are authorized to request countersigna- [fol. 275] ture, it is the duty of the agent requested to furnish the countersignature to proceed to furnish the same. Please say whether that is true as to salaried agents or to both salaried agents and commission agents, according to the contracts of your company with its agents?

A. I would say that as respects a salaried agent, it would be a duty. As respects a commission agent, it would be entirely optional as our contracts impose no obligation on our commission agents to furnish such services when requested to do so.

Q. Are you able to explain why in automobile lines in Virginia a lower commission is paid than on those lines in other states except possibly in Massachusetts?

A. Yes. The automobile rates are built up of some four or five items, including the pure premium, which is the amount that is figured will be required to pay the losses, the load for claim expense, the load for office expense, the load for taxes and the load for production cost.

—. ——— ———.

A. In the make-up of the Virginia rate the amount of load permitted for production cost is five per cent less than the load that goes into the rate for production cost in all other states excepting in Massachusetts.

Q. That rate resulted from proceedings before the State Corporation Commission and negotiation with the State [fol. 276] Corporation Commission, did it not?

A. It did. The Corporation Commission will not permit the companies to load Virginia rates for more than twenty percent production cost, while the country-wide production loan on automobile business is twenty-five percent.

Q. Who countersigns contracts for your company in Virginia?

A. Either myself or my principal assistant in this office, Mr. Eitel, where the business is referred to the Richmond branch office.

Q. Do you countersign contracts produced in Virginia as well as contracts produced outside of Virginia?

A. Very frequently.

Q. What are the circumstances under which you do that?

A. Very frequently one of our agents will have a customer coming to Richmond to get license plates for a vehicle of a type which requires filing with the Corporation Commission of a liability policy, or will come to Richmond in connection with some public works contract on which evidence of insurance must be supplied before the contract will be signed. The agent will direct that customer to come to our office and arrange his insurance. We provide him the policies immediately, countersign them, he goes ahead with [fol. 277] the P. W. A., or the state department, or whatever body it may be that he has to satisfy as to his insurance coverage, while we send to the agent, whose customer he is, copies of the daily reports and complete information on the transaction for the agent's records. We very frequently also perform those same functions for an agent where a customer has been out to look over highway work on which the Highway Department is to receive bids where the contractor will come straight to Richmond to make up and

submit his bid without going back to his home town, with the result that he does not have an opportunity to see the agent and procure bid bonds on such work as he may determine to bid on. In those cases the agent directs the contractor to come to us and secure his bond which, of course, necessitates our supplying the signature.

Q. In those cases is the contract written here in your Richmond office?

A. Yes. Incidentally, I referred to the Highway Department. It applies to other state departments but not to the Highway Department. Those bids are now altogether with certified checks.

Q. In those cases do the agents at Orange or Suffolk or Newport News or Roanoke, as the case may be, receive either the agent producer's commissions or the general [fol. 278] agent's commissions just as they would have if they had written the contracts and countersigned the same?

A. They receive exactly the same commissions as though the entire transaction had been handled by themselves.

Q. Would it subject those men to inconvenience and increase sales resistance and subject their assureds to troublesome and perhaps costly delays if you were not able to continue that practice and if you should not be able to continue that practice?

A. As a matter of fact, we had several rather embarrassing situations develop along exactly that line during the period between the date when this new law became effective and the date on which the injunction was granted.

Q. I believe it would be fair to say that most of the countersignatures furnished by you and your assistant are on contracts produced outside of Virginia and covering in Virginia, is it not?

A. I would say yes.

Q. How does it hurt for your right to furnish countersignatures to be cut off from you by this 1938 Virginia Act?

A. It hurts me in that I am supposed to run my office on the difference between the producer's commission and the total acquisition cost which is the normal general agent's [fol. 279] commission. The necessity for paying additional commissions for securing countersignatures in Virginia cannot but have the tendency to increase the cost of carrying on the company's operations in Virginia. It further puts us in a position of not being able to service our Virginia agents as effectively as we can where we are in position

to furnish them with countersignatures in Richmond on business in connection with which they need that service.

Q. I see that those things are very injurious to your company but all of these losses fall on the company rather than you. How does any of that loss reach you?

A. It reaches me because my expense of operation is taken into consideration in judging my worth to the company, as well as the loss ratio on my business. After all, there are only one hundred cents in the dollar out of which we must pay losses and all operating expenses which include commissions, and anything that has a tendency to push my expense ratio up naturally has a tendency to reduce the profits on the operations from my territory and, to that extent, reduce the value of my services to the company. If they must pay someone else to do something that I have for years been doing for them, it would seem but natural [fol. 280] to assume that my services are worth somewhat less to them than they were at the time that I was able to perform the service that they must now pay someone else to perform.

Q. Supposing that the company you represent has $60,000 in premiums per year produced outside of Virginia but which are premiums for strictly Virginia coverage on those contracts produced outside of Virginia; supposing that the commissions for the production of that business were $6,000 or $7,500 and the company had to still continue to pay those commissions but, in addition, had to pay from $3000 to $3750 to get Virginia countersignatures on that business; do you mean to say that you would have to save that amount out of other expenses of your office here in order to make the result of your stewardship here in Richmond as acceptable as it previously had been.

A. If you increase your expense $3000 to $3750 in one place, you have either got to reduce it in some other place or your expense ratio is up to that extent.

Q. Do you think that in the long run that factor will be felt on your salary?

A. It might very reasonably be.

Q. In the 1938 Virginia Act there is a reference to state agents. In your knowledge of the casualty and surety business, is there any such office or title used in Virginia? [fol. 281] A. Not in the casualty and surety business. That is a fire insurance term.

Q. Where claim services are furnished from a general agent's office, who pays for them? For example, in the Lunsford office who pays for his man McClellan?

A. The several casualty companies represented in the office each make payments toward that salary.

Q. Who pays for Ganzert, the claim man in Davenport's office?

A. Globe Indemnity Company.

Q. Do you happen to know who the claim man in Roanoke for your company receives his directions from and from whom Ganzert receives his directions?

A. The claim man in the Roanoke office, as respects Fidelity & Casualty Company claims, is under the direction of the Claims Attorney in our Richmond office. I understand or am told by members of the Davenport agency that their claim man is under the direction of the Claim Department of the Globe Indemnity Company.

Q. Do you have knowledge of any conditions under which assureds are truly consulting the best interests of their stockholders in placing their business covering in Virginia through agents and brokers in other states?

[fol. 282] A. It has been my experience in such contacts as I have had with large buyers of insurance, located outside of this territory, as well as those located in the territory, that the motive behind their selecting one large brokerage house or agency to handle all of their business has been that they felt that there was definite advantage to them in so placing their insurance in order that they might have one agent or broker whom they might hold responsible for the proper handling and placing of the business and have that agent or broker situated in their home office town so that he, or a representative of his office, would always be available for consultation or advice in connection with their insurance problems. I found that true of quite a number of substantial risks in my own territory, including some in the city of Richmond, and in connection with an agency which holds itself out as general insurance agents and brokers.

Q. Do you find people with headquarters in Richmond or Norfolk or Roanoke and other large centers, but with casualty insurance and surety risks in other parts of Virginia than the locality of their headquarters, who seem to prefer to deal with one agent as to all of their insurance and surety

matters in the locality of their headquarters instead of scattering their business throughout the cities and counties of Virginia?

[fol. 283] A. It is a general practice to place business through one channel from headquarters, though not infrequently, where the business is of a nature that it is felt good will will be engendered through permitting local managers to place business locally, to permit, in some instances, business to be placed locally for that reason.

Q. By a local manager of the assured?

A. Yes.

Q. Do you also encounter cases sometimes where the business is produced outside of Virginia where, for some reason, the assured has told his non-Virginia broker or agent to associate a Virginia agent with him and share the commissions with him?

A. That quite frequently happens, particularly in businesses which are particularly sensitive to public relations as, for example, public utilities.

Q. Was that going on before this 1938 Act became effective and because assureds thought it was in their interest to get that local good will or service or has that just come into being since this 1938 Act became effective?

A. Cases of that sort have not been affected at all by the 1938 statute as the reason for doing it existed before the statute was passed and it was done before the statute was passed.

[fol. 284] Q. Does your company throw any obstacles in the way of that being done in the case of all its business being produced outside of Virginia if the assured wanted to do it?

A. We would prefer it being done.

Q. Having reference not to New York brokers but to out-of-state agents and brokers generally, have you recollection of occasions when any of them have come into your territory seeking better to inform themselves as to the problems and situations of the assured in order to write insurance contracts for him?

A. Yes. It is the practice of the larger brokerage houses, with their very large lines, to periodically have the risk inspected by some of their own people.

Q. Would you say that it is not an occasion of any particular comment, because of the frequency of its occurrence, when some non-resident agent or broker has personnel representing his office come into Virginia?

A. I would hardly be able to make any statement as to the frequency with which it is done.

Q. But do you recall occasions when it has occurred?

A. I do know that it is done, yes.

Q. Mr. Nichols was not able to say, at Page 95, whether brokers have offices in the south. Please state, as to your six states, what is the situation in that regard now and formerly?

[fol. 285] A. So far as I definitely know, there is at this time no brokerage house in any of the metropolitan centers having offices in Virginia: I am rather definitely under the impression that there are one or two in Atlanta and, at least during the season, there is one, and I think two, that maintain offices in Miami. Marsh & McLennan at one time had an office in Richmond but they discontinued it a number of years ago. They also have offices in New York, Chicago, Detroit, Pittsburg, Philadelphia, Cleveland and perhaps elsewhere.

Q. Perhaps unfairly, I attributed to Mr. Staples the implication that Virginia citizens and Virginia corporations would give no business to Lloyd's Associations. Can you say, as a matter of fact, whether in your six states, including Virginia, that is true?

A. There are at least two of the most substantial banks in Richmond who are at this time carrying their blanket bonds in Lloyd's and I know of at least a half dozen other large banks within the territory under my supervision who also carry their blanket bonds in Lloyd's. I have seen it estimated that Lloyd's takes as much as from two to three hundred million dollars annually in bond premiums out of the United States.

Q. There has been some intimation that the way these non-resident brokers and agents get this business away [fol. 286] from the Virginia agents, even though the business covers in Virginia, is that they are guilty of unethical practices such as, for instance, making an arrangement between the company and the assured and the producing broker or agent as a result of which the premium is reduced by an amount by which the producer's commission is reduced. I ask you whether it is a fact or not that in these cases the premium rates and the reduced amount of producer's commissions thereon are ordinarily filed with the appropriate bureaus and whether the record of what actually took place will be furnished upon the inquiry of any interested competing agent or company?

A. There are many types of casualty business which are subject to special rating. In that special rating plan, as in all rating plans, there is a specific load for acquisition cost. In such cases the acquisition cost can be set at whatever figure is satisfactory to the interested companies provided it may, in no case, exceed the maximum acquisition cost. Not infrequently in the make-up of these special rates an acquisition cost is loaded into the rate which is materially less than the normal acquisition cost. When such special rates are promulgated the acquisition cost which has been loaded into them is promulgated with the rate and that rate, subject to that acquisition cost, is available to any [fol. 287] company or its representatives upon request therefor from the bureau.

Q. There was an intimation in a question of Mr. Staples that the automobile insurance contracts of the mutual companies had provisions in them subjecting the assureds to assessment. Is that so as to the Virginia contracts of the larger mutual companies?

A. It is not true of many of the mutual companies doing business in Virginia as the state permits the issuance of non-assessable policies by mutual companies who meet the statutory requirement in that respect.

Q. There are many large lines of casualty insurance, such as workmen's compensation, automobile liability, public liability, and the like, where the insured has no particular interest in what you pay to the claimant, are there not?

A. Yes, that is generally true of all third party insurance.

Q. If he has an interest it would be that the payment should be small for its ultimate effect on his rate rather than it should be unduly liberal because that would have an ultimate effect of raising his premium rate; is that right?

A. That is particularly true of an assured having fleets or risks which are large enough to be subject to individual experience rating so that their individual experience is reflected in their individual rates.

[fol. 288] Q. Am I right then that if, instead of a New York man having produced that business, some Virginia man had produced it, and he used his good offices to make the company pay out more than was perhaps clearly right under one of these contracts, he would be hurting the assured ultimately rather than helping?

A. Certainly, as respects a risk that is large enough to be individually experience rated as all losses are directly reflected in the assured's premium rate.

Cross examination.

By Mr. Staples:

Q. Mr. Adair, about what percentage of the time do you spend in your Richmond office?

A. Probably in the neighborhood of twenty-five percent.

Q. You spoke of countersigning contracts and what the countersigner does in connection with that. Did you have reference to countersignatures which might be given by resident agents as the statute defines them under the Virginia statute, under circumstances where they receive at least fifty percent of the commissions, or did you have reference to countersignatures in your own office?

A. As respects service the agents might render?

Q. Yes.

[fol. 289] A. I would say the circumstances would be substantially the same whether they were countersigned by us or by the agent.

Q. That would be your opinion?

A. Yes, sir.

Q. Have you ever had any experience with any resident agents who have signed these contracts and have gotten that part of it and didn't render any service?

A. Yes, sir.

Q. Who was that?

A. Davenport Insurance Corporation countersigned several such items. Lunsford's office in Roanoke, I think, countersigned several. Mr. Shackelford here in Richmond countersigned several.

Q. You say that they did not render or have not rendered any service at all in connection with those policies?

A. No, sir, not called upon or requested to.

Q. How do you know whether they have done it voluntarily or not?

A. I just know——

Q. You are assuming that, aren't you, Mr. Adair?

A. That it is highly improbable that they would have without our knowing it. They have no record of the business except such record as is necessary to enable them to see that they are paid the countersigning fees which are due on the items.

[fol. 290] Q. Was that business of your company that they countersigned?

A. Yes, sir.

Q. How do you know what record they may have made in their offices when they countersigned those policies?

A. In the case of Davenport, the bonds were taken into their office and countersigned and immediately taken to the Highway Department and filed and we subsequently sent them the information necessary for them to record them for accounting purposes.

Q. And they did have a record of the transaction covered by it?

A. They knew it was a contract bond for a certain date for a contractor of a certain name, carrying a certain premium.

Q. Did they know what risk you carried?

A. They had no detailed record of what project was covered by the bond. For their purposes it was unnecessary that they have that.

Q. Did they know that, I mean?

A. They could ascertain it from the Highway Department if they wished to but they made no record of it at the time.

Q. So the only reason you have for stating that they have not rendered any service is because you don't think they had any information in their office which would enable them to render it; is that correct?

[fol. 291] A. And because it would be wholly contrary in the practices of the business for them to do so.

Q. When was that practice established?

A. During my thirty-five years in the business.

Q. How long during that time or how many instances during that time that you know of had these resident agents been receiving as much as fifty percent of the commissions?

A. Only since the enactment of this statute but it has never been customary for resident agents in this or other states to contact assureds on business they countersign for other agents unless it is in agreement with the producing agent.

Q. Have you ever known of any resident agent in Virginia to countersign prior to the enactment of this statute?

A. Oh, yes, sir, we very frequently have business sent us by non-residents where we are requested to have the

signature supplied by an agent in the vicinity of the risk so that if the assured needs local services he can secure them on request. That almost invariably involves personal lines of insurance as distinguished from business risks.

Q. In instances of that kind does the local agent get any of the commissions or not?

[fol. 292] A. Yes, sir, that is generally a matter of agreement between the local agent and the non-resident producer as to the extent of participation the local agent shall have.

Q. As to what service the local agent rendered in those particular cases, of course you don't know anything about that, do you?

A. No, sir. If there happened to be losses under the policy, he might render very valuable services. If there are no losses, the chances are he would have no contact with the risk until it comes up for renewal again, but people are more inclined to want local service on their personal lines than a large, well-organized business organization on insurance covering risks of that type.

Q. How many local agents do you have in Virginia?

A. About eighty-five, I think, at the present time.

Q. Are they competent, most of them?

A. Competent, yes, but you have to bear in mind when you use that word that a man's efficiency in our business is, to a very great extent, limited or determined by his opportunities to handle business of our class. You take in the average town, we will say, of four or five thousand, an agent in that town, for example, may have one or two steam boiler policies on his books. A man can't handle that limited amount of insurance in a given line and be thoroughly [fol. 293] familiar with that line, nor can he be expected, in connection with a business from which he has no more income than he would have from that business, to take the time and effort that would be involved in keeping up with the numerous manual changes affecting that business, with the result that the average agent in a town of that size, while he may be right on his toes on his fire business, which will make up the bulk of his business, may have a fair working knowledge of the general run of automobile business, but when you get him into the lines in connection with which he has little opportunity to write any appreciable volume, he just can't keep up with the changes that are continually taking place in the casualty business. You see our business

is much newer than the fire business. It is much more subject to change. As a matter of fact, we have in our own organization and the larger city agencies—for example, the Davenport Insurance Agency here in Richmond has a sufficient volume that they have different individuals in their agency who specialize in the different lines in order that they may keep abreast of these changes that are being made all the time and you just can't expect your average run of agent in a town of 5000 or 10,000 population to have the opportunity to handle the volume to keep himself expertly posted.

Q. You think, however, in the fire business that they would be able to do this?

[fol. 294] A. The fire insurance business is fairly standard. You have got a standard policy on a residence risk and you put certain endorsements, which are more or less standard, on it. On the mercantile risk you put certain endorsements which are more or less standard and the bulk of a small or moderate sized town agency's business is made up that class of business.

Q. I gather that you think the local agent in those cases would be fairly competent to handle any situation that would arise; is that correct?

A. Yes, sir, and it is quite the general practice in the fire business, excepting where policies are written under blanket —what they call I. U. B.—forms which are blanket forms covering many locations in possibly many states, for the business to be directed to the local agent. That has been the practice in the fire business for years.

Q. Going back to the question of these countersignatures, what experience have you had prior to the enactment of this statute with countersignatures by resident commission agents who did not receive any compensation therefor?

A. You mean as respects my own company?

Q. Your own company, yes.

A. Such countersignatures were quite generally furnished by salaried employees. Of course, as respects such countersignatures, there was no question of compensation.

[fol. 295] Q. I asked you with reference to resident agents. You testified about the custom as to what service these resident agents would render where they merely countersigned the policy. Now I am asking you what experience you have had with reference to any such practice as that?

A. It has been my experience, excepting where there was a specific agreement between the non-resident producer and the resident countersigning agent that the resident countersigning agent was to furnish some service for which he would receive a participation in the commission, that the resident agent did nothing but supply the countersignature and, more often than not, made no record of the transaction.

Q. Did he ever countersign at all under those circumstances?

A. Yes.

Q. Why would he do it?

A. Not infrequently, for example, an agent in North Carolina would know an agent in Virginia and, on a policy written in his own office, would send that policy to an agent in Virginia.

Q. What makes you think he didn't compensate him for it?

A. I have had them tell me so many times.

Q. That is the only knowledge you have?

A. That is the only knowledge I have, yes, sir.

[fol. 296] Q. And he countersigned then as an accommodation to a friend of his in another state?

A. Yes, sir.

Q. That was just an exchange of courtesy?

A. Yes, that was rather a common condition to find, particularly in border towns.

Q. But it has been a practice, I believe you said, in some cases where a non-resident broker or agent felt he would like the cooperation and help and assistance of a local resident agent, to request a local man be associated with him in the contract? I mean a local commission agent.

A. Yes, sir.

Q. What was the reason for that?

A. Because of a feeling in connection with that particular piece of business that it might be advantageous for the assured to have some local man available that he could call on in the event he needed some service from him.

Q. And in cases of that kind it was customary to divide the commissions on some agreed basis?

A. Yes, sir.

Q. But there has never been any general practice, has there, which would enable you to speak from experience of resident commission agents countersigning contracts in which they did not participate in the commissions?

[fol. 297] A. Yes, sir, in those cases that I just mentioned.

Q. I am speaking of the general practice. I don't mean a few isolated cases where border towns are involved. I mean the general practice prevailing out over the state?

A. No.

Q. Of course, I understand in isolated cases where friendship, or something of that kind, would invoke a courtesy that it might be done but I am talking about the practice itself. There has been no such practice?

A. There has been no such practice except among agents who have a good deal of interstate business and make what they term a reciprocal arrangement.

Q. And they get a resident local agent to countersign principally for the reason that it is more convenient than sending it in to the home office?

A. Yes, sir. For example, you find such conditions existing in towns like Suffolk where they are close to the North Carolina line and I recall our agency in Suffolk had an agreement with an agent in Sunbury, North Carolina, which was just over the line, and they sent policies back and forth as a matter of reciprocity.

Q. What service is there that should be rendered which one of these local agents of yours is not able to render with reference to boiler insurance?

[fol. 298] A. Well, there are comparatively few agents in the smaller towns and cities who could give a man a rate on a boiler if he asked him for it. For that reason the great bulk of the boiler and machinery business, and the other casualty lines that are not as well known as automobile business covering individual cars, for example, is produced with the assistance of company representatives. As a matter of fact, the primary function of our special agents is the production of business through local agents.

Q. Do I understand that your company declines to provide its local agents with information as to what the rates are on boiler insurance?

A. No, sir, we are delighted to furnish it to them and to furnish them with manuals and, at some expense, see that they are sent reprinted pages of the manual which probably come out at the rate of an average of twenty-five a month but which ninety per cent of the local agents never put in their manuals because they have so little of the business that they just don't keep their manuals and files up to date on it.

Q. That boiler insurance is a very small part of the insurance business of the state anyway, isn't it—that is, generally out in the territory?

A. Relatively, yes, sir, but on the other hand it is generally the part of an insurance line of every manufacturing plant which means that they have to have service on it even [fol. 299] though their boiler premium may not represent ten per cent of their total insurance premiums.

Q. Don't you think that your agents are competent enough to get that information if they had a risk of that kind in their territory?

A. I know that the vast majority of the business that comes to us from those agents comes to us in the form of a request that we give them assistance in lining up and procuring the business for this prospect that they have.

Q. They get it, though, don't they?

A. They get it with the assistance of the company field man, yes, sir.

Q. That is what your company field man is there for, isn't he?

A. Yes, sir.

Q. And that is part of the legitimate conduct of the business, isn't it?

A. Yes, sir.

Q. And with that help which your company provides to all resident agents and also to brokers and everybody else in that business, these people are just as well equipped, with that assistance, to handle it as anybody else, aren't they?

A. Yes, but they cannot handle it as expeditiously or as satisfactorily as a large and well equipped office.

[fol. 300] Q. Is it not true, Mr. Adair, that with reference to all lines of risks carried by your company, there are located in the cities like Roanoke, Lynchburg, Norfolk, Richmond, Danville and Staunton, agents who are thoroughly conversant with the business and are able to render any type of service in the territory contiguous to those cities?

A. Yes, sir. If we could just get all of our agents like Davenport, Lunsford, Garnett Tabb, or Gibson, Moore & Sutton and agents of that type, we would probably have little use for field men.

Q. So that there is really no necessity for a New York broker?

A. Not in those cities.

Q. Well, the New York broker does very little business in a village far off from those cities, does he?

A. Oh, yes. You take all through the smaller cities and towns in the state there are plants which are owned and controlled out of the state and on which the insurance is placed out of the state. As a matter of fact, that probably makes up the bulk of the non-resident business. For example, there is a Marshall Field business at Fieldale near Martinsville, controlled out of Chicago. The Pet Milk Company has a plant near Abingdon. That is placed out of St. Louis. These mills, which are going up in increasing num-
[fol. 301] ber in the middle and valley section of the State, are all controlled out of the state.

Q. You think then these out-of-state companies, if they had a risk like the DuPont plant over here—I don't know about that particular plant but that is an illustration—located close to a big city, wouldn't put this insurance through a big city broker?

A. Excepting for the centralization of control and close supervision that they have and the personal contact that that gives them with the people that they are holding responsible for seeing that their risks are properly and adequately protected. I have had the President of a plant near Norfolk, whose business we were carrying (this is, in part, in answer to what you were saying) who told me, "I would like to specify that my insurance be renewed in your company but we hold Johnson & Higgins responsible for seeing that we are adequately protected. We cannot hold them responsible and dictate to them where they shall place the business. That is their responsibility."

Q. Who is Johnson & Higgins?

A. A New York brokerage house.

Q. They could hold somebody else down here responsible if they wanted to, couldn't they?

A. Yes, sir, but Johnson & Higgins handled their insurance country-wide.

[fol. 302] Q. Which one of your answers is correct, that it is on account of the incompetency of the local agents in these smaller communities or because they want to centralize all of their insurance through their main office or home office?

A. I don't think I have said the local agents are incompetent. I did say that they were lacking in experience

because of lack of adequate volume to give them the experience and I did not intentionally intimate that the only reason large out-of-state concerns deal through brokerage houses in the cities of their headquarters was the lack of experience of the agents in the smaller towns as I think unquestionably the centralization of control is a factor in the case of plants in the smaller towns, as well as the plants in the larger cities where competent or experienced, well-organized agency service will be available.

Q. You think then that a man could not be called incompetent because he was not able to properly transact the business due to lack of experience; is that correct?

A. I wouldn't say he is necessarily incompetent, no. I would say he is inexperienced.

Q. That is largely a question of what you mean by "incompetent," isn't it?

A. It may be.

Q. Does your office engage in the business of actually [fol. 303] soliciting risks except at the invitation of, and in cooperation with, its resident agents in Virginia, that is commission agents?

A. I would not say regularly so, no, sir, and where we do produce any business directly we invariably turn that piece of business over to some resident agent when it is put on the books. The agent may know nothing about it until we send him a copy of the daily report and tell him that this piece of business has been put on the books and is credited to his account and we are sending a copy of the daily report for his records.

Q. Do you do that where you have more than one agent in the locality?

A. Well, the question of whether we had one or more agents in the locality wouldn't influence our going after the business one way or the other if we saw the lead, and the business would be turned over to that agent in the locality. If there happened to be two agents in the town, it would be turned over to the one of the two in whose office we were the leading company.

Q. I understood you to say yesterday that your company had declined to recognize any territorial integrity of agents unless they would give you the exclusive agency. Would that apply in a case of that kind or not?

[fol. 304] A. I don't see that the question of territorial integrity would be involved there because, while we would

write the business, it would go to the agent in the territory under our policy of doing no direct business.

Q. You would then, even though the agent had nothing to do with procuring the contract, recognize a moral claim on your company to that business, would you not?

A. It would not be a matter of a moral claim but the definite policy adopted by our company of doing no business, what is commonly known as over-the-counter, on which some local agent does not receive commissions.

Q. What is that policy based on? Isn't that in recognition of the fact that these agents have a moral claim on that business?

A. That policy is based upon a declaration of policy made by the National Association of Insurance Agents in which our management acquiesced, and since that time we have done no direct business and such direct business as we had on the books of the Richmond office at that time, which probably amounted to $8,000 to $10,000 a year in premiums, was distributed to Richmond agents.

Q. You don't recognize, however, the justice of the agent's right to commissions in cases where the risk in his territory is originated in New York through a broker in that city?

[fol. 305] A. We do not pay the agent commissions in the cases under discussion on the principal——

Q. I didn't ask you why; I just asked you whether you did or not.

A. We do not in either case recognize the fact that the agent necessarily has any right to commissions, and assuming the agent you are speaking of is the agent at the place of coverage.

Q. How many cases, to the best of your estimate, do you have personal knowledge of and that you have personally taken part in securing the signatures of resident commission agents?

A. There have only been two cases which I have personally handled.

Q. You don't have any knowledge of the circumstances under which the other countersignatures were secured, do you?

A. Not excepting that under the routine which we have set up the policy is sent to the agent who is to countersign with the request that he countersign it, return it to us with his bill for the countersigning commission, and the policy

and the bill for the countersigning commission are then sent to the producer, after a record is made of it by us, so that we may follow it up and see that the producer remits to us for forwarding to the countersigning agent the amount of commission due the countersigning agent.

Q. Do you have any knowledge of what transpired at all [fol. 306] in connection with these other contracts which were countersigned by resident commission agents? I mean personal knowledge?

A. No personal knowledge because, as I say, we have a definite routine set up for handling that as they are handled as routine matters.

Q. So you are not in any position, are you, Mr. Adair, to state what service these particular Virginia resident agents, who have received part of the commissions in connection with these cases, may render or whether they inspected or examined the policies or what they may do in the future in connection with them, are you?

A. Not on the basis of continuing in direct contact with those particular transactions, no.

Q. You have had only two occasions that you have had any personal contact with, haven't you?

A. That is right.

Q. So you are certainly not in position to say what has been the general practice throughout the state under the new system established by a new law when you have personal knowledge of only two cases, are you?

A. No.

Q. In your direct examination you spoke of the engineering and claims division of your company. Is that one division or two divisions?

A. Two divisions.

[fol. 307] Q. Are they both located in your branch office here at Richmond?

A. We have an engineering section here and one in Atlanta, a third one in the territory under my supervision in Charlotte and the fourth in Jacksonville, Florida.

Q. I mean are they located in your office, the same building, the same rented quarters?

A. Yes, sir.

Q. You are all in there together?

A. Yes, sir.

Q. The purpose of your office, Mr. Adair, is to deal with your resident commission agents primarily, isn't it?

A. Yes, sir.

Q. Your function is entirely different from the function of that resident agent, isn't it?

A. Yes, sir, in that he is producing business directly for himself, and I am producing business for local resident agents.

Q. If one of your resident agents has a loss on a policy he has written and the policy holder goes to him to take the matter up and get it adjusted, what does that resident agent do?

A. He will take a report of the loss on a proper form and send it to the particular claim office which services his claim. If it is a comparatively unimportant loss, the claim [fol. 308] will be adjusted through that agent through the sending to him of a draft in payment of the claim which he will deliver to the assured. On the other hand, if it is a loss of some importance, we will either send the company representative from the nearest claim office or if it is in a locality where we use a local attorney or an independent adjuster, as we do in many sections, he will investigate and make a report to us and handle the loss under the direction of the nearest claim office. Many of our losses involve third party claims. In fact, the bulk of casualty companies' business does involve lines where you are handling third party claims.

Q. What do you mean by third party claims?

A. For example, automobile claims where someone is injured by your car. Our liability doesn't involve a payment directly to you but our policy obligates us to hold you harmless and we take over the handling of that matter in your place and stead and pay, on your behalf, to the third party claimant who claims he has been damaged by you, whatever is necessary to dispose of the claim and secure a release on your behalf which is, of course, secured in your name.

Q. Isn't it a fact that in a large number of cases the local resident commission agent will be quite active in negotiating with the claim adjuster and trying to bring about a settlement which will be satisfactory to his client or the policy holder with the least embarrassment to him and in [fol. 309] such a manner as to make the whole transaction pleasing to his client as far as possible?

A. That is, to a considerable extent, true of run-of-mine claims but on claims of any size the experienced resident

agent seldom has any direct contact with the claim because, dealing as such claims almost invariably do with matters of law, the thoroughly experienced agent realizes the danger of his undertaking to deal with matters which are as technical as the investigation of legal liability, and that sort of thing, and pretty generally stays in the background. They do, however, quite generally help the company claims attorney or the local attorney in any way they can in giving him information because, as you say, they are interested in seeing the claim handled with the least trouble and embarrassment to their customer.

Q. But you think that a local commission agent would properly confine himself to that particular phase of the transaction where he is competent to act and not get into the field of law?

A. Yes, sir.

Q. What duties are there that you now personally perform as a branch manager which would be affected by this statute which you are complaining of in your complaint in this case?

[fol. 310] A. As I understand it, if the restraining order were not in effect, branch managers could not countersign but I do not understand that it is the purpose of the 1938 Act to prevent branch managers from going on as they have before, doing soliciting, underwriting and delivering contracts, as well as furnishing supervisory and assisting services to producers.

Q. As I understand your answer, Mr. Adair, the only act which you personally are prohibited from doing by the 1938 statute, which you have been accustomed to do in the discharge of your duties prior to that time, is the countersignature of policies and contracts; is that correct?

A. Providing I am correct in my understanding that under the Act as construed I would not be prohibited from delivering policies, as well as countersigning and rendering similar services to the assured, either directly or on behalf of agents.

Q. Your understanding is in accordance with the construction which has been placed on the Act by the defendants. As I understand the testimony which you have given, Mr. Adair, the practice of countersigning by you, or one of the persons authorized to do so by your company, consists of merely signing your name or the name of the person countersigning without any examination of the policy to

[fol. 311] ascertain whether, in your opinion or the opinion of the person signing, it is in proper form or whether it gives proper coverage for what is contemplated; is that correct?

A. Yes, sir, insofar as examining them with that in view is concerned. We, more often than not, do inspect them because quite frequently, in connection with large national lines, new ways of doing things and new methods of cover are developed which are not published in the manuals because they are peculiar to that particular risk and we always are interested in seeing whether or not there might be any such development in those particular policies which we might find it practicable to use to advantage in our own territory in connection with some of our business.

Q. Is that examination in a case of that kind made with a view of determining whether or not any mistake has been made in the New York office or merely for the purpose of informing yourselves as to new practices.

A. Merely for the purpose of informing ourselves as to new practices. The policies have already been inspected and approved as to form and cover before they are sent to us.

Q. So that the countersigning in your office is really a sort of a perfunctory matter?

A. Yes, sir.

Q. And you do not even keep a copy of the policy in your [fol. 312] office that you countersign; is that correct?

A. We have a copy of the policy for claim department purposes.

Q. That is kept in the Claim Department, is it?

A. It is kept in the general files in a file that is specifically set apart for non-resident business.

Q. Do you have anything to do with a contract of that kind after it is made?

A. Almost never. When I say myself, I refer to the production unit in the office. The risk is, of course, serviced claim-wise and engineering-wise by the local claim and engineering division.

Q. You spoke of some lines of insurance within your territory which have been negotiated through your office by brokers. How much of that business has there been?

A. You mean by brokers within the territory or by brokers from outside the territory?

Q. Brokers within the territory.

A. A comparatively small amount. The greater proportion of our volume comes through agents who are regular contract agents with us.

Q. Do you know of any business which has been brought into your office inside of the last twelve months by any broker residing in your territory?

[fol. 313] A. I could not offhand specify any particular risk. It is not, however, particularly unusual, especially here in Richmond, as respects the Virginia territory, for agents representing companies which do not write boiler or machinery business to broker those lines with us.

Q. But they are not licensed as brokers?

A. They are not licensed as brokers.

Q. What service does your engineering division render in connection with the various types of contracts? You may specify with reference to each type separately, if you desire.

A. As respects workmen's compensation insurance, we periodically inspect the plants and call the assured's attention to any dangerous condition we may find in the plant either as respects lack of proper guarding of machines or the failure of employees to use guards, as respects poor housekeeping in the plant, which means permitting things to lay around on the floor instead of keeping the floors clean and the aisles clear, and we also supply the assured with what we term a "claim analysis" which gives the date of an accident, the name of the injured employee, approximately how the injury was received, what it cost in compensation and medical expense, and the engineers go over those forms with the assureds to show them how the accidents are occurring in their particular plants and discuss what methods may be adopted to reduce the accident frequency and the [fol. 314] loss cost which is of equal advantage to the assured, inasmuch as compensation risks of any size are subject to individual experience rating so that their individual losses are directly reflected in their rates. On automobile fleet business the same general type of service is rendered, only there, of course, the equipment itself is inspected to see that the brakes are in order, that it has all of the proper lights and that they are in working condition; also a windshield wiper, rear view mirror and the other equipment that makes for safety. Meetings are held at intervals to discuss safety measures with the drivers. Wherever it is practicable we arrange for the setting up of a safety committee and, as far as practicable we arrange that a committee of employees shall have reported to it and shall investigate every accident that occurs, however slight, and let the employees' own fellow employees on that committee determine

whether that employee was negligent and should suffer some penalty, either through loss of some time or a fine or something of that sort, and those measures, where you can secure employer cooperation, are very helpful in improving the experience on individual risks.

With the mechanical lines, such as boilers, elevators, machinery, we make from three to four inspections of the insured's units a year and send a written report of the condition of the unit to the assured with recommendations for any needed adjustments or repairs. As respects boilers, [fol. 315] we undertake to get inside of the boiler at least once a year to determine from internal inspection whether the boiler is unduly pitting, whether it is collecting sediment in the bottom of the shell so that there will be a tendency for it to unduly corrode, and make tests of the water so that if the water is of a characteristic that it has an adverse effect on the boiler, we can recommend treatment of it to overcome that sort of thing. As a matter of fact, the mechanical lines are really preventive insurance.

A great portion of the premium goes for the engineering and inspection service. A considerably larger load of the premium goes for inspection and engineering than for the payment of losses. It is really servicing insurance with a guarantee back of it that if our inspection and engineering services don't prevent the loss, we will pay for it.

Q. How about surety bonds and bonds covering faithful performance of duties of employees and officers?

A. That type of investigation it is not practicable to make by direct use of company employees. In applications for all of those bonds we are given a history of the man's employment for the last ten years. We are also given a list of references. We correspond directly with former employers and with references and, in addition, get an outside report on the individual through some of the reporting agencies. Our forms all call attention to the persons of whom we make [fol. 316] inquiries that their replies will be treated as strictly confidential and neither the information they give us nor the source disclosed, with the result that through those channels we are able to get a pretty accurate picture of what sort of person we are setting out to bond and you will probably be surprised at the frequency with which we will find that some employee with a past that would unquestionably bar his employment will be uncovered in those investigations, with the result that we can pass on to the employer

enough of the information to serve his purpose to determine whether or not he is justified in retaining the person in his employ or whether he is unacceptable in a position of trust.

Q. Do your local resident agents also more or less keep acquainted with the habits of people like that who are covered by these surety bonds and try to see whether, in their opinion, there is any occasion for any alarm or anything of that kind. If they find out a man is drinking or gambling, or anything of that kind, wouldn't they report that, either to you or to an employer?

A. You occasionally have cases brought to your attention along those lines. As a matter of fact, both as respects bonds and as respects other forms of cover, unfortunately it is not done to anything like the extent that the average person not in the business would think it is done or to the extent it might be done.

[fol. 317] Q. Don't you encourage your resident agents to do that?

A. We do and there are still in the business a certain percentage of agents who feel a responsibility along that line but unfortunately in more recent years, with agents representing a multiplicity of companies and probably, in a measure, due to the attitude that some of the companies took in the heyday of 1928 and '29, where some of them in effect said to the agent, "You get the business; we will underwrite it," your average agent doesn't feel that responsibility.

Q. That depends, of course, on the type of agent?

A. On the type of agent. As I say, fortunately there are still some of the old school agents in the business. We not infrequently will get an automobile policy back for cancellation with just a note from the agent—"This chap is drinking too much; I think we will be better off without his business."

Q. As a matter of fact, a resident agent should do that, shouldn't he?

A. Yes, sir.

Q. Is this engineering staff which you have thoroughly adequate to perform all the functions that your company feels proper and reasonably necessary to perform for the assureds?

A. We think it is. We, of course, as the business grows, are having to continually add to it but we keep card records [fol. 318] on all risks and undertake to see that they get their inspections at the periodical intervals when they are due.

We have, of course, a double check on that. The engineering services in my territory are under a supervising engineer in the territory and if the reports don't get to New York within a reasonable date after a given risk is due for inspection, they call attention to the oversight and ask why the inspection hasn't been made. Of course, with boiler internals which necessitate closing down the boiler, we can't write a plant "Our man will be at your place on such and such a date to inspect your boiler," because that may be right in the middle of a big rush when it would cost them a lot of money and, therefore, those inspections may vary sixty days from the due date.

Q. The casualty companies, as I understand it, do undertake to provide whatever they think the occasion demands in the way of servicing those policies; is that correct?

A. That is correct, yes, sir.

Q. What type of service is rendered by the engineering department with reference to policies which originate in New York?

A. The engineering staff in the southeast services all of the company's business in the southeast, regardless of where it is produced.

[fol. 319] Q. In other words, the engineering department doesn't make any distinction at all?

A. No, they do not make any distinction at all. That is a part of the company organization and with them a piece of company business is a piece of company business.

Q. What service, along those same lines, do these New York brokers render in Virginia coverage contracts, that is where your service might not be adequate, or is it adequate, or what is the situation there?

A. The service of the brokers' engineering departments, as I understand it, is used by them as a supplemental service in a further attempt to improve the experience and reduce insurance costs to their customers.

Q. Have you ever known of any case in Virginia in which they have succeeded in following up your service and discovering any omissions which your service has failed to render?

A. No, sir, I would not know because their reports would not come through my office and I would never see them.

Q. Have you ever heard of any such cases?

A. I cannot say that I have, no, sir.

Q. Have you ever heard of the New York office complaining to the engineering department in Richmond that it has omitted to do what was possible to do in the way of servicing [fol. 320] these contracts?

A. No, sir.

Q. Then you have never heard of a case in which the engineering service of the New York broker has, in effect, supplemented the service provided by your company, to the extent of discovering anything which hadn't already been discovered?

A. No, I know nothing more than that they have supplemented the service. Whether it was of any direct advantage to the assured I would not be in position to say.

Q. Have you ever heard of any assured claiming that it was to his advantage?

A. No, sir, but there again I am not in contact with that business.

Q. Do the $500,000 of premiums that you spoke of apply to your Virginia office or your entire territory?

A. Our Virginia office will do close to $500,000 in Virginia.

Q. Annual premiums?

A. Yes, sir.

Q. I believe you stated that quite a good part of your activity is in trying to build up the good will of the assureds who have contracts of protection with your company. Do you do that independently of the resident agent who procures the contract or is that done in cooperation with him?

[fol. 321] A. Generally in cooperation with him. Ordinarily I would not, just out of hand, call on a customer of one of our agents. However, I have been covering this particular territory for so long that in many cases I am close enough to some of our agents and their more important customers that I don't hesitate to go in to see them without necessarily having the agent with me, but it is always on behalf of the agent.

Q. And you do that because you are sure that the agent will approve of your doing it?

A. Yes, sir.

Q. The purpose therefore of your doing that is as much to build up the good will of the agent, or probably more so, than it is of the assured, is it not?

A. Yes, sir, it is to tie our whole picture together. We are definitely an agency company.

Q. You spoke yesterday of the resident commission agent's authority to issue bonds such as surety bonds on employees or officers of the Government. Do they have authority, under their powers of attorney generally, to execute any bond they see fit within the scope of the power of attorney?

A. No, sir, because under our powers of attorney we give an agent a wide open power which is limited only in amount.

Q. I mean within the scope of his power of attorney. Of course, if it went over the amount it wouldn't be within it.

[fol. 322] A. Yes, but there are many companies that specify in their power of attorney the limit of the agent's authority as respects varying classes of bonds.

Q. I said provided he is within the scope of his power of attorney, does he have power to do anything within the scope of it?

A. I am coming to that. We give an agent a power of attorney for $100,000 and give him a separate letter of underwriting instruction which is an agreement between himself and his company and specifies the limits to which he may go on his own underwriting discretion as respects the various classes of bonds. We may, for instance, tell him that on contract bonds he shall not execute bonds on contracts exceeding $20,000 without first getting authority from his supervising office or from the home office.

Q. I had reference particularly to surety bonds.

A. Well, contract bonds are surety bonds.

Q. I mean surety bonds on employees and officers of the Government?

A. Bonds on employees are generally known as fidelity bonds and do not require a power of attorney for execution. Any of our contract agents would be qualified to issue a fidelity bond, guaranteeing the honesty and faithful performance of duties by employees.

Q. How about a public officer?

[fol. 323] A. Public officers and Government employees require statutory or Government forms of bond which call for execution by a power of attorney holder and bonds of that type may be executed only by agents who do hold powers of attorney.

Q. Does that agent have to take it up with the company before he executes the bond?

A. Only where the particular bond in question exceeds the authority granted him in his letter of underwriting instruction.

Q. Does he have to send in any application, or anything of that kind, before he executes a bond of that type?

A. Not if it is within his discretion. He satisfies himself that the risk is an acceptable one, executes it, and then sends us the application with the reporting sheet form we supply him for reporting bond business.

Q. You spoke yesterday of some possible inconvenience which might result to Virginia agents not living in Richmond where an immediate execution of one of your contracts is required. Do you anticipate there would be any difficulty in these agents over the state building up a form of cooperation with one another in signing those bonds at each other's request, something like they do on the borders of the state which you were speaking of some time ago?

A. It might be possible to do that which, in many of the cases, would take care of the situation, though not in all [fol. 324] of them. For example, we recently were requested by a Newport News agent to take care of an execution for him in Harrisonburg or Winchester—I don't recall which—and it happened we had no agent in the particular town where the execution was to be had, and our embarrassment was only relieved by the fact that this restraining order happened to be issued the day before the contract had to be signed.

Q. Who countersigned the contract?

A. Our representative from this office who was up there on other business, was duly licensed, and with the issuance of the restraining order was able to sign the contract.

Q. But if you had had a resident agent at that point you would have been relieved of that embarrassment?

A. Yes, sir, provided he was willing to execute it for the Newport News agent without charging him for it which, however, would have been optional with him. He could have signed for nothing or he could have said, "I want five per cent."

Q. That, of course, is a question of a practice of cooperation which these agents may build up among themselves, is it not?

A. Yes, sir, but there is a lot more talk about that than you actually find in practice.

Q. Of course, the resident agent, if he desires, could get [fol. 325] to Richmond from anywhere in the State within a few hours, couldn't he?

A. Yes, sir.

Q. I read you the following testimony of Mr. Nichols:

"Q. If a Virginia risk is produced by a New York broker, what branch manager's office gets credit for that. Does the Virginia office or the New York office get credit?

"A. The New York office, if it is placed in the New York office.

"Q. Most of them are, aren't they?

"A. Yes.

"Q. So there is no incentive, particularly in the Richmond branch office, on the part of the local branch manager to retain that business, otherwise then mere loyalty to the company, is there?

"A. That is right."

Do you agree with the correctness of those answers to those questions?

A. In general, except that it seems to me Mr. Nichols overlooked the fact that the larger the company's volume is in a given state the more complete servicing organization that volume will support and, that state being my territory, I would have the advantage of the more complete servicing organization. That is really a factor.

Q. You are assuming, however, are you not, that if a different practice were established your company wouldn't get the business, whereas, as a matter of fact, your company would probably get its share of the business regard- [fol. 326] less of whether a New York broker getting all of the commission is to be continued as a practice or whether it is abolished; isn't that true?

A. I am assuming that in undertaking to force this business to Virginia agents under this law an attempt is being made to do one of those things which cannot be done by legislation and that the bulk of this business will never be forced into the hands of Virginia agents.

Q. If your assumption is correct, you think the effect of that would be to cut down the efficiency of the engineering force?

A. Yes, sir.

Q. Is there any other effect that it would have on your business in your office.

A. No, sir, not directly.

Q. You spoke yesterday of some of the agents in other states insisting on associating Virginia resident commission agents. When cases of that kind happen does your office handle them?

A. Yes, sir.

Q. That is regarded then as a part of the business of your office just the same as if it actually had originated in Virginia; is that true?

A. Yes, sir; that is not invariably true but generally the business is sent to us with the request that we issue the [fol. 327] policies and have them countersigned by the local representative and the local representative and the non-resident producer work out an agreement between themselves as to the split of commission, with the understanding that the local representative will render such servicing as the assured may call on him to render.

Q. Naturally if that business is handled by your agents who are working in your office, your office should get credit for that business, shouldn't it?

A. Generally, though not necessarily. The business is actually produced outside of the territory and I would have no particular claim on it.

Q. Suppose the assured has its office in Richmond. Wouldn't you be in position to render services in connection with that policy along with the local resident agent?

A. The claims division and engineering division (if it were a risk susceptible to engineering) in my office would render those services.

Q. Doesn't your office render any service at all outside of the engineering and claims divisions?

A. There is almost no other service that is rendered on casualty business.

Q. Who renders the service of going over the situation with the assured and determining what type of contract he should have and how much protection he should carry and [fol. 328] the form of his contract and various questions of that kind that arise?

A. On risks where the business is controlled and placed outside?

Q. I mean controlled in Virginia.

A. Well, quite generally that is done by the resident agent who produces the business unless he feels that he wants us to help, in which event it might be done by myself or

someone from the office or someone of the twelve or fifteen special agent field men whose business it is to work with agents and assist them in matters of that sort.

Q. Primarily, the resident agent does that, with your cooperation and help, to such extent as he may request?

A. Yes, sir. As a matter of fact, we have developed a method of risk survey in which our special agents undertake, with local agents, to accomplish just what you mentioned, to give an insured a picture of all of his exposures, just which ones he now has insured and to what extent, and which ones are not now insured, how they could be properly insured and what it would cost him.

Q. And does the resident agent, with such cooperation and help as he gets from your office, usually keep an eye on the risk during the life of the contract and make such suggestions for changes in the manner of operation or in the cov- [fol. 329] erage of the contract, or any other questions that occur to him during the life of the contract after it is written?

A. That is his proper function and we set up a system of cards on all risks we survey so that if at any particular time it is desirable that certain phases of the risk be gone into he is dropped a line to remind him that now is the time to see so and so about this particular phase of his risk.

Q. Who does that—you or the engineering department?

A. The production department does that.

Q. Does the resident agent himself call on the engineering department or does he call on you and you furnish the engineering department?

A. On business on the books he may call on my office or he may write the supervising engineer directly.

Q. Which is usually done?

A. On business on the books he would generally write the supervising engineer and, in many cases, they personally know the engineer who covers that particular territory and they may drop him a line at his headquarters and ask when he is going to be in their section, that they would like to take up this matter with him.

Q. Naturally, if the New York broker should contact one of your resident agents in Virginia and have that business written, the business would be credited to your office, wouldn't it?

[fol. 330] A. Yes, sir. As a matter of fact, we have some such business on the books now and had it before the 1938 Act went into effect.

Q. Naturally, if the New York office desires the countersignature of a Virginia resident agent, they would send it to you, wouldn't they?

A. Yes, sir.

Q. And it would go through your office?

A. Yes, sir.

Q. If there were any equitable adjustment of the credit which the company would give to your office for its participation in that business and the volume of the business is of any size, it would really help your office, wouldn't it?

A. It would increase my volume to that extent but I expect there would be lots of argument as to what was an equitable adjustment.

Q. It would, however, place your company in a position where it would have to call upon your office to render that service of procuring these countersignatures, wouldn't it?

[fol. 331] A. Yes, sir.

Q. And to such extent as your office is given credit for that business, it would increase the overriding commission between the production cost and the acquisition cost which you say goes to carry on the expense of your office, wouldn't it?

A. Yes, sir, unless the business was subjected to the maximum acquisition cost or general agents' scale of commissions.

Q. Do you have any general agents operating through your office?

A. We have general agents who are general agents for commission purposes. We have no true general agents who are responsible for a given area of territory and for the appointment and development of agencies in that territory.

Q. What does the company do about the expense of your office with reference to your handling business which comes through these resident agents who get the commissions of the general agent which leaves no overriding commission to take care of any expense?

A. We just about get by on the expense of operating my office on the overriding commission that we have in the volume produced by our regional agents and our local agents.

Q. Does your company discourage giving to its resident agents a status of resident general agents in Virginia?

A. Under the acquisition cost rules which are promulgated by the acquisition cost conference (Plaintiffs' Exhibits 1 and 2) to which all companies doing business in New York [fol. 332] State must belong, the number of maximum commission agents which a company may have in Virginia and the number of regional agents they may have is limited. The company is glad enough to put out the permitted number of maximum commission contracts where they can secure a substantial volume of business that reasonably consistently produces a profit.

Q. So that in evaluating the services of your office the company would certainly not ignore the service which you render in connection with the general agent, although there might not be any overriding commission which would be available to help pay the expenses of your office; isn't that true?

A. Yes, sir, because after all they contribute their part of the profit my office produces.

Q. Would it be more or less trouble for your office to countersign one of these contracts itself or for it to procure the countersignature of a resident agent in the state?

A. It would be less trouble, of course, for us to countersign them ourselves in the company office because, in all fairness to our agents in general, if one-half commission is going to be paid to some resident agent in the state for countersignature, we couldn't very well throw all of that to agents in Richmond. In fairness to our other agents, we would have to send the policies out to various agents in the state to be signed by them and either returned to us for forwarding to the office of production or be signed by them and forwarded directly to the office of production.

[fol. 333] Q. You would naturally place that with an agent in the territory in which the risk is covered?

A. That would be the natural inclination, yes, sir.

Q. Is it not true, Mr. Adair, instead of the service which you would have to render to your company being diminished by this statute, it would be increased?

A. Clerical work would be increased, yes, sir.

Q. You would have to contact these agents and they would really have to call on you to do more than merely have a perfunctory countersignature, wouldn't they?

A. Well, all I would have to get from them would be the countersignature. Whether they would do anything in connection with the business after that remains to be seen, but I would have to see that the signature was good and would have to see that they actually received the commission which they would be due under the law.

Q. It doesn't appear then that you would be personally injured by this thing at all, does it? As a matter of fact, there would be more demand for your services than there was before; is that true?

A. Except that the signatures that I heretofore have been able to supply without cost to the company will hereafter be supplied at a cost of fifty per cent to the resident agent who supplies the signature.

Q. That doesn't come out of the company, does it?

A. Unquestionably at least the greater part of it would come out of the company because it is reasonably certain that the New York and other metropolitan brokerage houses [fol. 334] are not going to pay it.

Q. As a matter of fact, this perfunctory signature you speak of has no particular value to the company, so far as you individually are concerned, does it?

A. Except that it meets the condition which they must meet, which is that the policy be countersigned by a resident agent, and meets it without cost.

Q. As a matter of fact, if this countersignature is a perfunctory thing, as you say, they could probably employ somebody at ten cents a signature who would be very glad to do that work, couldn't they?

A. But not comply with the provisions of the law, as I understand it.

Q. I am speaking of the law prior to 1938.

A. Even if they paid ten cents a signature, that would be more than they would have to pay for me to sign it because they must, in any event, have someone in my position or a comparable position.

Q. How many contracts do you have a year through your Richmond office, average?

A. I estimate around 100 a month.

Q. So that would cost about $10 a month if they paid ten cents a signature, wouldn't it?

A. Yes, sir.

Q. That is not a very great deprivation to your earning power, is it?

A. No, sir.

[fol. 335] Mr. Staples: Counsel for the defendants is glad to admit that the affixing of a perfunctory signature to a contract of this type is valueless and worth only the physical effort put forth in signing the name of the person signing.

Q. You stated yesterday that your company would really prefer that on business originating outside of the state, covering in Virginia, the agent or broker originating the business should associate with him a resident Virginia commission agent. Why does your company prefer this?

A. I was expressing a personal opinion and it is my impression that my opinion was that the company would prefer having all of their business through company agents. I did not intentionally intend to express the opinion that the company would prefer that these non-resident brokers necessarily handle the business through Virginia agents. It would, of course, be immaterial to us whether the business is the agent's own production or whether he controls it through out-of-state sources, but naturally being an agency company, we like to see our agency plants build up and develop to the greatest extent possible and that would necessarily have the tendency to build up and develop the plants.

Q. I don't know whether I understand you clearly or not, but does your company prefer, or does it not prefer, that this [fol. 336] business originating through non-resident brokers should be handled also through Virginia resident agents as associates with such brokers?

A. I would be unable to make any definite statement as to the company's policy in that respect as I have not heard those who would be qualified to express such an opinion on behalf of the company make any statement in that connection.

Q. What did you have in mind when you made that statement yesterday?

A. My recollection of my statement was that we would like to have all of our business from our own direct agents.

Q. No, I think you are mistaken about that. You were speaking of a case in which local Virginia agents were being associated with non-resident agents or brokers and you stated your company preferred that. I was wondering what

you had in mind when you made that statement, if I correctly understood you. If not, I can have the stenographer read over the testimony and see whether I am correct.

A. I did not intend to say just what you think I did say and which I may unintentionally have said. As I said a few moments ago, we now have and for years have had on the books of my office a number of risks which come to us through our agents which I happen to know come to those agents through non-resident brokers. I would be glad to see all [fol. 337] non-resident business handled in that fashion, from the non-resident to a resident agent in Virginia and come to us through that resident agent along with his own business for the obvious reason that, so far as the company is concerned, my territory and my office would receive undivided credit for all such business.

Q. You will note in the questions and answers propounded to you yesterday the effect of your testimony is that your company not only would not throw any obstacles in the way of the practice of associating with non-resident agents and brokers a Virginia Commission resident agent but that you would prefer same. Do you recall what you had in mind when you made that statement?

A. It has been my experience where non-residents have so associated resident agents with them in connection with business they may have in the State of Virginia, the dealings have been between the non-resident and the Virginia agent and, so far as we are concerned, the business comes to us from our own agent.

Q. Do you know whether or not your company prefers that or not if you desire to construe your answer having reference only to your own personal views and not the obstacles or wishes of the company itself?

A. So far as I know, the officials of my company have expressed no definite view on that point but in my experience I have known of no case where they have thrown any obstacles in the way of business being handled on that basis.

[fol. 338] Q. Going back to the question of the recognition of some rights on the part of your agent in territory within his jurisdiction, I understood from your answer that the reason no such rights were recognized was because your general agents usually represented other companies which are competitors of your company. Will you please state whether or not you recognize the rights of resident com-

mission agents in Virginia, who are not general agents and who do not represent any competitor of yours?

A. The cases where our agents represent us exclusively are very rare and I do not know of any case involving an agent representing us exclusively where this question has been raised.

Q. What do you mean by representing you exclusively?

A. I mean representing no other casualty and surety company excepting the Fidelity & Casualty Company.

Q. You mean that most of the agents throughout Virginia represent competitors of yours?

A. Yes, sir.

Q. Do you mean to state that you have no agents who do not represent competitors in Virginia?

A. I mean to say that such agents are the exception rather than the rule.

Q. That may be true, but what is the situation with reference to them when you do have them?

[fol. 339] A. As I stated a moment ago, I know of no case where the company has any non-resident business that is within the territory of an agent who is representing this company exclusively.

Q. Have you received any instructions from your company to recognize any such rights if an occasion should arise?

A. No, sir.

Q. What would you say about a policy of all insurance companies as a whole, both your own company and your competitors, recognizing the territorial rights of your agents and their agents within the territory of Virginia as to business covering in Virginia?

A. I would say that that might be desirable if we could bring about a condition where the agents were agents exclusively of a certain company.

Q. I do not know whether you understand my question or not, but the question was whether or not all companies, regardless of whether the agent represents only one, should recognize not the claim of any particular agent, but the composite or combined claim of all of the agents in the state to some protection for Virginia business; that is, you might say, a joint claim and a joint recognition by the companies of the joint claim of all of these agents to Virginia business?

[fol. 340] A. I think that might be reasonable, provided it is left for the agents and the companies to work out what would be a reasonable compensation in individual cases, to be based upon the services to be rendered by the agent in connection with the business.

Q. You think that that plan is reasonable, do you not, although the details of the plan should be worked out?

A. Yes, sir.

Q. I understood that there was some claim being made, or a rumor or general belief among certain parties that there was a custom prevalent among the New York brokers of giving back, either to the large national corporations which are assureds, or to their representatives, a part of the commission received by the brokers. I will ask you what information, if any, you have with reference to that practice or any general belief that exists with reference to same?

A. My best information and belief is that no such practice exists. Undoubtedly there probably is some of it among the brokerage houses of less high standing, as undoubtedly there is some of it among the ranks of our agents. In New York State, particularly, there is an exceptionally efficient insurance department and that some of this does exist is best evidenced by the fact that they have from time to time revoked licenses of brokers for improper practices of that sort. However, the same thing can be said of company [fol. 341] agents and probably to as great an extent. It is not my belief from my many years of close contact with the business that the practice of rebating is indulged in by either the better class brokers or agents.

Q. Do you have information with reference to any cases in which it was claimed that the broker and the officer or insurance representative of one or more of these large corporations had formed a sort of collusion by which the assured's officer or representative personally received the benefit of this cutting or splitting of commissions, or whatever you choose to call it?

A. You hear of such cases every now and then but it would not be my judgment that it is any more common with men occupying positions of that sort than it is with men occupying comparable positions in other lines of business, particularly purchasing agents.

Q. Is it not true that it is generally understood in New York that there is such a practice prevalent among purchasing agents?

A. It is undoubtedly true in New York and other places.

Q. What kind of contracts are there that these Virginia banks place with Lloyd's?

A. Principally bankers' blanket bonds, though there is also some blanket safety deposit box insurance written by [fol. 342] Lloyd's, particularly within the last two or three years when there has been a decided increase in the tendency of banks to carry that sort of insurance.

Q. What do you mean by blanket bonds?

A. A blanket bond is a contract designed particularly for banks which takes the place of fidelity bonds on their officers and employees. It takes the place of their safe burglary insurance. It takes the place of their interior robbery, of outside messenger robbery and holdups. It covers their securities and collateral when in the hands of correspondents for safekeeping or in other recognized places of safe deposit. It covers securities in the hands of transfer agents, registrars, and that sort of thing, and it may cover the misplacement or mere disappearance of money, securities or other properties and, on one of the forms, may also include check forgery. Under an instrument of that type the banks pays but one premium and has protection on all of those exposures, subject to the limit of the bond.

Q. Those types of exposures require very little service, do they not, as compared to other bonds written by your company?

A. There is almost no service in connection with bankers' blanket bonds excepting the servicing of claims.

Q. What is included in the term "acquisition cost"?

A. Total production cost represents the total cost to the [fol. 343] company of laying the business down in the company's home office; that is, agent's commission, which would include the brokerage, if there is a broker, special agency service, all services rendered to or through agents in acquiring the business.

Q. What do you mean by special agency service?

A. Special agents are salaried company employees whose function is to travel throughout a territory, assisting agents in the production of business and seeking new agency appointments.

Q. Those agents operate out of your office, do they not?

A. Yes, sir. They are the people, for example, we send to the agent, as I mentioned earlier, when he has a machinery prospect or boiler prospect or some other prospect in a line with which he is not entirely familiar and needs some assistance in handling and closing.

Q. Do you have sufficient knowledge of the conduct of the business through the New York office to state whether or not any case occurred between the time of the taking effect of the 1938 statute and the granting of the temporary restraining order in which it has been necessary for your company to pay a greater amount of commissions, including that which was paid to the Virginia resident agent, if any, for the procuring of a contract than was customarily paid out in commissions to the broker alone prior to the taking effect of said statute?

A. I have no specific information on that point as any such transactions would be handled in the office originating the business rather than my own office.

Q. If any such practice were followed by any one par- [fol. 344] ticular company, would it not have the same status as ordinary competition between companies as to which would pay the greater commissions for business and would it not be in violation of the conference rules of these companies?

A. It probably would not be in violation of the acquisition cost rules because the company would not be paying the direct producer of the business any more than his normal commission, nor would they be paying a total production cost for the business in excess of the total production cost permitted by the rules.

Q. Then the total production cost allowed in the premium rate is sufficient to take care of this, is it?

A. The total production cost fixed in the premium rate is made up of the items of acquisition cost or agent's commission, plus a loading for field supervision, and similar services. The company would find it impossible to operate within the limits of the acquisition cost rules if on a very considerable part of their volume they expended the total production cost, or substantially the total production cost, for agents' commissions, whether the commission be paid to one agent or in two payments to one agent for production and to another for countersignature.

Q. As I interpret Mr. Nichols' testimony on this subject, his opinion was that a practice of this kind of competition

[fol. 345] between companies in this manner would result in chaos in the business. Do you entertain that opinion?

A. It unquestionably would have an unsettling effect in the business. I doubt that you could go so far as to say it would create a chaotic condition.

Q. It would be a very bad practice for the companies to embark on as between themselves, would it not?

A. It would be a practice that would be very hurtful to the interests of the companies, agents and insuring public, in my judgment.

[fol. 346] Redirect examination.

By Mr. Christian:

Q. Did I understand correctly that the responsibility you have in your territory as branch manager is that the total acquisition cost and field supervision cost of the business produced in that territory shall not exceed the rules set out in Plaintiffs' Exhibits 1 and 2?

A. Yes, sir.

Q. Is the metropolitan branch office operated on a similar theory?

A. Yes, our metropolitan office has to operate on the volume they receive from agents who are paid less than general agents' commissions, their expense being taken care of by the difference between the amount of commission paid their producers in the lower commission brackets and the maximum amount of commission permissible under the acquisition cost rules.

Q. I notice from Plaintiffs' Exhibit No. 1 that on automobile business in Virginia the commission is fifteen per cent and I assume a New York broker, producing such business not specially rated, would, before the enactment of this Act, have received fifteen per cent; is that correct?

A. Yes, sir.

Q. And that would leave, according to my understanding, five per cent that would be available for the expenses of Mr. Nichols' branch office; is that correct?

A. For Mr. Nichols' branch office and any such field supervision which might be necessary but which is wholly unnec-
[fol. 347] essary in the majority of cases where you are dealing with large brokerage houses.

Q. And the same way on workmen's compensation insurance covering in Virginia and produced by a New York

broker, he will get ten per cent and there would be seven and one-half per cent left for the payment of expenses of the New York branch office and field supervision; is that correct?

A. That is correct.

Q. If a Virginia agent has to get seven and one-half per cent of the automobile commission and five per cent of the workmen's compensation commission and the New York broker has to get a fifteen per cent automobile commission and a ten per cent workmen's compensation commission, that would only leave for the company to spend in Mr. Nichols' branch office minus two and one-half per cent instead of five per cent on automobile business and two and one-half per cent instead of seven and one-half per cent on workmen's compensation business, would it not?

A. Yes.

Q. And if Mr. Nichols' office continued to function as heretofore, it would have to do that functioning on these reduced amounts which are less than half of what it is now costing the company to do that functioning, would it not?

A. That is correct.

Q. Is there any reason to suppose that New York agents [fol. 348] and brokers rebate any more than Virginia agents and the agents in your other five states; or that corporate employees, with headquarters in New York, are any more often sought to be bribed and corrupted, or are they more amenable to bribery and corruption than corporate employees in Virginia and in your other five states?

A. The fact that the rates for fidelity insurance are the same in both places would indicate the standard of honesty is about the same.

Q. The Insurance Departments of Virginia and of your other five states are called on to investigate allegations of rebating and discrimination and other improper practices by agents and have occasion to discipline them from time to time just as the New York department does, do they not?

A. That is my understanding.

Q. A question has been suggested as to whether brokers and agents control the selection of the company with which the contracts of their customer assureds shall be placed and who shall be the insurer in those contracts. Speaking of your Davenport and Lunsford agencies, is it a fact or is it not a fact that, generally speaking, they are able to

determine whether their business will go to your company or the Globe or the others which they represent?

A. It is highly probable that where insurance is placed with high type agencies or brokerage houses, the insured does *know* know what company's policy is delivered until [fol. 349] the contract is delivered.

Q. Is this a situation peculiar to Virginia or to New York or do you find it so throughout your territory and, from what you know and hear of the business throughout the United States generally, that the agents and brokers control the selection of the company in ordinary cases?

A. It is quite generally true, as is best evidenced by the fact that more often than not where you ask a man where he has his insurance, he gives the name of his agent rather than the name of the company whose contract he holds.

Recross-examination.

By Mr. Staples:

Q. What effect, if any, upon the premium rate would it have for the broker to give part of his premium to the assured?

A. Before directly answering your question, I might say that I may have been a little hasty in saying that the fidelity rates are the same in New York as in Virginia, as I now recall that Virginia is the one state in the Union which is not subject to the uniform rates contained in the bonding manual. The basis of my statement to the effect that a similarity of such rates would indicate that the practice in question was no more common in New York than in Virginia is that an employee who accepts bribery, whether it be from his employer's insurance broker or from someone else selling to his employer, is a dishonest employee, and that being [fol. 350] so, if this practice were materially more common in New York than elsewhere, it would seem natural to presume that the cost of fidelity insurance, which is the protection that guarantees the honesty of employees, would be greater in New York than elsewhere.

Q. Is it not true that the volume of premiums involved in these transactions provides a very much more fertile fund for breeding such practices than would be in the south where the premiums are usually small?

A. It seems to me that in this situation, as in most, things are relative. While the New York brokers deal with larger

premiums, it must be borne in mind that their expense of doing business is a great deal more than the expense of doing business in the smaller cities of the country. Under the circumstances, it is doubtful that despite the large figures in which they deal, they are relatively any better off in the final analysis than a well-managed and successful agency in a city the size of Richmond.

Q. Assuming then, Mr. Adair, that the standard of honesty is the same, and I believe you said practices of this kind prevail all through your territory, it nevertheless is true, is it not, that the agents in your territory do not have an opportunity to have transactions of this kind with reference to these large volumes of business about which we are speaking, by reason of the fact that they have no contacts with the persons with whom any such arrangements would be made?

A. It is unquestionably true that in my territory the agents do not handle accounts as large as many of the ac- [fol. 351] counts in the metropolitan areas but I would like to be fairly understood as maintaining that both as respects New York brokers and agents in this territory the percentage of those who are dishonest and stoop to such unethical practices as rebating is very low in both classes.

Q. With reference to the effect on your office, I will ask you this question: If it were possible by legislation to eliminate the practice of these large national corporations making in the large cities their risk contracts covering all over the United States, and especially in Virginia, would it not have the effect of very greatly increasing the volume of business in your office?

A. If it were practical it might have that result but the thing that particularly concerns people in my position is a conviction that this is one of those things which cannot be controlled by legislation, just as the country has heretofore found that there are other things that legislation simply cannot control. We are satisfied that the attempt to enforce the provisions of such a statute will result in the driving of this business, or certainly the greater part of it, to non-admitted or other companies not subject to the provisions of the statute.

Q. Mr. Adair, I did not ask you for your opinion as to whether a law of this kind could be made effective but I stated in my question that if it were possible to prevent the making of these contracts in the manner I stated in

ny previous question, whether they are made through [fol. 352] mutual companies or whether they are made through non-admitted companies or whether they are made through Lloyd's, would it have the effect of increasing the volume of business in your office?

A. It would not have the effect of increasing the volume of business in my office if the business goes to companies of the type you suggest.

Q. If the contracts are not made in New York they naturally wouldn't go to those companies, would they?

A. It is inconceivable that a Virginia statute can control what will be done in New York.

Q. You still haven't answered my question. I am assuming that that can be done by the law. I didn't ask your legal opinion. I would like to know what the effect of it would be if it could be accomplished?

A. If it could be accomplished, yes, sir.

Q. Then it would have the effect of greatly increasing the volume of business in your office; is that correct?

A. If it could be accomplished, yes.

Q. And it would also have the effect of greatly increasing the volume of insurance production business done in the State of Virginia and these other states outside of Virginia?

A. If it could be accomplished, yes.

[fol. 353] EDMUND T. DEJARNETTE, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. DeJarnette, I wish you would state your full name, age, residence and occupation?

A. Edmund T. DeJarnette, Ashland, Virginia; 41; insurance, general agent.

Q. What insurance companies do you represent at the present time, Mr. DeJarnette?

A. National Liberty Insurance Company, the Employers Liability Assurance Corporation and National Surety Corporation.

Q. Are all of those casualty and surety companies?

A. One fire, one casualty and surety, and one mainly surety but writes some casualty.

Q. Which is the fire company?

A. National Liberty Insurance Company.

Q. Is that one of the Home Insurance Company group?

A. Yes.

Q. I wish you would state, briefly, what your experience has been in connection with the fire, casualty and surety business in Virginia?

A. I have been in business in Virginia more than twenty years. I was first employed by the Virginia Insurance Rating Bureau, next by the Fidelity-Phoenix Fire Insurance Company and then went into the local agency business in October, 1920.

Q. Have you been engaged in business in Richmond all of that time?

[fol. 354] A. In the local agency business in Richmond since October, 1920.

Q. Are you a member of the Virginia Association of Insurance Agents?

A. Yes.

Q. Are you an officer or director in that Association?

A. Director from the Richmond District.

Q. The principal questions involved in this suit relate to the handling of contracts and policies which originate through negotiations conducted outside of Virginia and I wish you would please state what has been the practice, prior to the passage of the 1938 legislation, with respect to the status of the Virginia commission agent with reference to fire insurance policies so originating?

Mr. Christian: None of the plaintiffs is a fire insurance company or in any way concerned with that business. This question, as well as others which may bear on the fire insurance business, is objected to as not material and the reading of answers to such questions will be objected to for lack of materiality.

A. It is pretty generally known and accepted by agents in Virginia that the fire companies have policies countersigned only by Virginia commission agents. I think every office in Richmond at one time or another has countersigned fire contracts for the fire companies on business covering in Virginia, originating outside of this state.

[fol. 355] Q. What has been the custom with reference to the compensation of the Virginia commission agent when he countersigned the fire policies?

Mr. Christian: Is it understood between us that my objection to the question and answer about fire insurance shall be taken as made to all questions and answers?

Mr. Staples: That is understood.

A. One-half of the commission in most cases is paid to the Virginia countersigning agent. In the case of Richmond agents it is always one-half commission.

Q. Do you know what compensation the non-resident broker has received in cases of that kind prior to the passage of the 1930 Act?

A. No, sir.

Q. When you speak of one-half of the commission being paid to the Virginia agent, what commission do you refer to?

A. Twenty per cent commission.

Q. Is that the standard producer's commission on fire insurance contracts or the general agent's commission?

A. In Virginia there has been no scaled commission for fire insurance as compared to casualty. There is only one commission to all agents of twenty percent except in the case of branch office agents where the company furnishes certain services and pays the branch office agent less commission.

Q. Does this branch office agent work on a salary or com-
[fol. 356] mission basis in the fire insurance business?

A. On a commission basis.

Q. But his commission is smaller on account of other compensation furnished in the way of office equipment or accommodations, or something of that kind?

A. Yes, sir.

Q. What has been the custom of fire insurance companies with reference to exclusive agency in a certain territory?

A. Fire insurance companies appoint an agent for a city or town and vicinity and they do not permit other agents to write in that territory in that company without that agent's permission. It is more or less exclusive territory.

Q. What is the extent of your territory with your fire insurance company?

A. I should say Henrico and six or seven counties adjoining.

Q. Do you have other agents working out of your office

in the fire business? I don't mean out of your office but associated with your office as sub-agents?

A. Yes, sir, solicitors, we term them under the law.

Q. Do most fire insurance agents represent more than one fire insurance company?

A. Practically all of them represent more than one company.

Q. Do you represent more than one company in your office?

A. No, sir, I represent only one.

Q. Does the practice of paying the local agent fifty [fol. 357] percent of his usual commission on business originating outside of the state, covering in Virginia, apply in cases where the agent represents more than one company?

A. Yes.

Q. What has been the practice with reference to the casualty and surety companies in Virginia?

A. My office never countersigned a contract prior to the effective date of this new law for a casualty company and I am informed by most all of my competitors in our various discussions that they didn't countersign any contracts for casualty companies.

Q. You mean contracts originating outside of Virginia?

A. Yes, sir.

Q. What has been the custom with reference to the countersignature of these policies in the casualty and surety business prior to the passage of this Act?

A. Countersigned by branch managers or company representatives domiciled in the state.

Q. Were these branch managers or company representatives compensated by commission or on a salary basis or both, or how were they compensated?

A. I can only answer that question from what the branch managers and company representatives have told me and they told me that they received no commission for it nor did they receive any credit for the volume in their figures from Virginia.

Q. Has it been customary in the casualty and surety business for the Virginia commission agents to receive any [fol. 358] compensation, generally speaking, on contracts and policies covering in Virginia but negotiated outside of the state?

A. I should say in the great majority of the business no Virginia agent participates in the commission. Pos-

sibly in some particular case a resident agent, due to some very close relationship with the assured in Virginia, or some other particular reason, or because the assured may have asked for that agent's service, the broker has recognized him and paid him a portion of the commission. That is done, however, in a number of cases.

Q. Has it been customary for the Virginia commission agent to render any service of any kind in connection with Virginia coverage on surety and casualty contracts originating and negotiated outside of Virginia?

A. They have countersigned such a few of them, other than the cases I named above, that I don't think any service has been rendered. I am not aware of it if it has been, except claim service when a claim occurred or possibly assistance in inspection or information given when the Virginia representative of the policy holder asked for it.

Q. Do you have reference to cases in which the resident commission agent did countersign or where he did not countersign?

A. Where he did not countersign and where he did countersign. I mean by that, in some particular cases this has been done to my knowledge, and I think to most peoples' knowledge, that some agent may have received certain business from companies as a particular favor to that agent [fol. 359] and a commission paid that agent. My information is that the agents did not render any service other than mentioned above in those cases.

Q. Did the agent render any service at all in cases in which he was not in any way associated with the business?

A. None whatsoever.

Q. The questions which I am going to ask you are directed to the general custom in the business and not to exceptional cases which may arise and I hope you will try to confine your answer to the general practice and leave out exceptions unless requested to testify with reference to exceptions. What is the practice with reference to the maintaining of the office and paying the office expenses of a Virginia local resident agent? Who pays those office expenses?

A. The agent.

Q. Does the company make any contribution generally to the expenses of the office?

A. Not to my knowledge.

Q. How is this Virginia resident commission agent com-

pensated? Does he receive any salary or is his sole compensation in the way of commissions?

A. Solely on commissions.

Q. What is the general rule with reference to company representatives? How are they compensated?

A. I understand on salary only.

Q. Is that your knowledge based on your general experience in the business?

[fol. 360] A. Yes, sir, I worked for a company and was paid by salary.

Q. What position did you hold when you were paid a salary?

A. I was Assistant Special Agent for one company and Special Agent for another.

Q. In your experience with the Virginia Rating Bureau can you testify as to the general component factors of the premium in the casualty and surety lines?

A. The Virginia Insurance Rating Bureau handles only fire. However, the same factors go into the make-up of the rate for casualty as they do for fire.

Q. Are you familiar with the building up of the casualty and surety rates?

A. To some extent, yes.

Q. What factor in that rate is designed to take care of the compensation of the commission agent?

A. In accordance with the Virginia law, the Corporation Commission governs certain rates. The rates are arrived at by what is known as pure loss ratio or pure premium, plus acquisition cost. In the acquisition cost the records show that twenty percent is allowed for producing commissions to Virginia agents.

By Mr. Staples:

Q. In what particular line of coverage is that true?

A. Automobile liability and property damage.

Q. Does that twenty percent cover also field supervision, or do you know?

[fol. 361] A. It does not. Field supervision is covered in the remainder of the acquisition cost.

Q. Are you sufficiently familiar with the construction of premium rates to state whether or not there is a factor included therein, regardless of the particular percentage involved, which does embrace the commission or compensa-

tion paid or to be paid to the agent who negotiates and procures the insurance contract and renders the service incident thereto or with respect to same throughout its duration?

A. The twenty percent referred to above pays all production cost which is commission.

Q. When a Virginia agent negotiates a casualty or surety contract I wish you would state what service he renders to the assured with respect to same, not only from the beginning of the negotiations but throughout the life of the contract? If you desire, you may pick out any specific type of contract as an illustration, or several types.

A. We will take the procuring of an automobile risk. First an agent talks to the prospective policy holder and explains to him the service that his office is prepared to render in connection with proper rating, as to exact location of each automobile to be insured, a proper classification of the rate to apply to the car and whether or not the territory rate is proper. He also explains to him that his office is prepared to render a service over the length of the proposed contract as to the inspection of the equipment, also inspection of the drivers of the equipment to determine whether or [fol. 362] not they are handling the equipment with the proper caution and care, with the idea in mind of preventing accidents or accident frequency and, of course, claim service. A careful check is made of all equipment and proper listing of each piece of equipment. The policy is issued, countersigned and delivered and proper arrangements made for the settlement of the premium.

Q. Suppose you have a fleet contract?

A. Certain credits apply to cars over five and, if more than ten cars, he is entitled to an experience rating after the risk has been with some insurance company over a period of two years to develop an experience and premiums against the losses justify it.

Q. How do you ascertain what his experience rating is or experience credit or charges, as the case may be?

A. In the case of my office, we keep a complete record of all claims reported and claims paid. Of course, we know the premium and at the end of the policy period we check that information with the company. The company furnishes that information to an automobile rating bureau and they promulgate the experience. Our office is thereby in a position to check. We also keep a complete list of all claims reported as to accident frequency so that we can be prepared

to advise an assured when he may need a safety talk for his drivers or a preventive measure to prevent further accidents.

Q. Do I understand from the foregoing that the Virginia agent makes a continuous study of the experience of the as-
[fol. 363] sured in cases of this kind so as to determine any changes in the rates or classifications or anything of that kind that may develop, or not?

A. My office makes a careful study of all such risks, mainly for the purpose of producing to the policy holder the broadest coverage at the lowest premium dollar and we know from experience that safety talks and accident consciousness will prevent further accidents and thereby produce lower premiums to our policy holders. That is why we make a very careful record of all accidents reported, so that we may keep a close contact with the policy holder and we know what the trend of the risk is before the result gets too bad.

Q. Suppose there is a loss incurred, what, if anything, does the Virginia commission agent do?

A. We follow it very closely in my office, each stage of it. In most cases we take the reports ourselves, turn them over to the claim adjuster, who is a company paid employee, and we follow that to its conclusion in this method: We have an understanding with our Claim Department that any hitch in the settlement of any claims will be brought to our attention before they go too far with them to antagonize our assured and by that method we know that the loss is being successfully concluded, and then finally a report comes over my desk stating that the accident has been settled for so many dollars. We immediately communicate with the automobile policy holder and tell him we have paid out so many dollars under this particular claim. If there happened to be several [fol. 364] claims during that policy year, we say to him, "Your risk is beginning to produce a bad experience and we suggest certain features of improvement."

Q. It is not always to the interest of the holder of a policy of this type that there shall be liberal payments to the claimants, is it?

A. Never to his interest because an experience rated risk has a premium in accordance with the experience.

Q. Is what you have stated with reference to automobile

liability policy contracts and the service rendered pursuant thereto , enerally true as to other agents in the state, so far as your experience enables you to speak.

A. From the amount of business my office controls, I think they probably render better service than I do.

Q. Who does?

A. These other agents. Most of them have as much business or more than I do, so they must be rendering equally as good, if not better, service.

Q. Under the custom of the business is an assured regarded as a client or a customer of the agent or of the insurance company or both? What is the custom with reference to the status of the insured?

A. He is regarded as a client or customer of the agent only. Of course, he has a contract with the company but he, in many cases, may not know what company it is. Certainly when you go to sell him he very seldom asks the company that you intend to place the insurance in.

[fol. 365] Q. When a loss occurs is it customary for the assured to confact the agent who wrote the policy or for him to get in direct touch with the Claim Department?

A. All of our policy holders get in direct touch with us and I think that is the case in most Virginia business. When the policy holder suffers a loss he immediately communicates with the agent who produced the business and looks to him for all service on that business.

Q. What is the attitude of the agent with reference to controversies and disputes which arise between the policy holder and the insurance company?

A. The agent is a representative of both the company and the policy holder and he is to see that the policy holder obtains every right and benefit that the contract entitles him to. The company, from the experience of handling claims and almost every company representative knows what that particular contract gives to the policy holder or the conditions of the contract, whereas the policy holder is not entirely familiar with all the conditions of the contract and the agent naturally explains those conditions to him when losses occur, and when there is a controversy the agent's position is to see that the company is fairly treated, that they pay no more money than the claim is actually worth and that the insured does not suffer. Although in some cases the

policy holder suffers more loss than he receives compensation for, but the agent sees that the contract is carried out by both parties as nearly fairly as possible.

[fol. 366] Q. Does the commission agent receive any other compensation at all than the commission paid him at the time of the writing of the contract?

A. No, sir.

Q. Does the agent regard that compensation as full compensation for the entire service that he renders or may render during the life of the contract?

A. Yes, sir. However, in some cases or, I understand, in quite a number of cases, casualty companies pay what is known as a contingent commission.

Q. What is the nature of that contingency?

A. I do not have such a contract. However, I am somewhat familiar with them and I am informed that it is a percentage on the net premium after deducting losses and expenses on business produced by an agent.

Q. It is on a sort of share the profit basis?

A. Yes, sir.

Q. I wish you would state the nature of the service, from the very beginning, which is customarily rendered by a Virginia commission agent in connection with a workmen's compensation insurance contract, if your experience is broad enough to enable you to state what that service is?

A. In producing compensation business it is necessary to make a personal inspection of the plant, including the bookkeeping department for pay rolls, to properly classify the insurance. Various rates make up a compensation risk. In order to see that the proper amount of pay roll for each [fol. 367] classification is charged for at the manual rate, an inspection is necessary and the policy is issued apportioning the proper amounts of pay roll to the various classifications such as office employees, outside salesmen, drivers, chauffeurs, and their helpers, and various other classifications that apply to the plant, and the policy is, of course, checked, countersigned and delivered and proper arrangements made for the collection of the premium. Then you furnish the assured with proper blanks to complete the reports of accidents in accordance with the law and also advise them that an inspector from the company, in the way of an engineer, will pretty shortly make an inspection of the risk and determine if any additional safety appliances should be installed to prevent accidents. When that report

comes through from the engineering department my office gets a copy. We immediately go to the assured with a copy of the recommendations and determine whether or not the recommendations justify the expenditure of that much money. In some cases we actually work out with the Engineering Department improvements on their recommendations.

Q. Does the Virginia commission agent assist in the preparation of proofs of loss in any of these cases?

A. In most cases the casualty claims proofs of loss for compensation insurance are not necessary. For automobile liability and property damage claims it is not a proof of loss; it is a release that is executed. Of course, that is done by the Claim Department because in those cases they [fol. 368] are dealing with third parties; they are not dealing with your assured. A release is obtained from the third party. In a number of cases our office actually gets those releases signed, particularly where we know the person that is being paid the money.

Q. What does the Virginia commission agent do, if anything, with reference to requirements contained in a policy that the company shall have certain notice of happening of accidents or losses of any kind?

A. The policyholder reports the claim to the agent and the agent, in turn, reports it to the company in accordance with the contractual conditions.

Q. You spoke of notifying the assured that his plant would probably be visited by the engineering officer of the insurance company. Do these casualty and surety companies maintain engineering officers in Virginia?

A. Most of them do.

Q. Is that service available to the assured at the request of the commission agents?

A. Yes, sir, a good bit of business is written subject to inspection, such as boiler business.

Q. Is it customary for the insurance company to provide this engineering service or claim service, or any other service that the company maintains in the state, to the assured at the request of the Virginia commission agent?

A. In our case the engineering office is in Richmond and we call the engineering department directly. We have that [fol. 369] authority. We tell them we want an inspection of a risk. If it is very, very important, it may be necessary

to do so this morning. As a matter of fact, before I left my office I called my engineer and asked him to inspect a boiler by noon tomorrow.

Q. I asked you with reference to the general custom with other companies aside from your own.

A. Yes, sir, all of them have it.

Q. I don't know whether your answer is clear or not as to that custom. Is it or not a fact that it is customary for the engineering and other services which are maintained by the casualty and surety companies in Virginia to be furnished whenever requested by the Virginia commission agent who represents that company?

A. Yes, sir. The companies in planting an agency stress the fine engineering department that they have here for your service.

Q. What about the service in connection with boiler inspection which is provided by the company?

A. Do I understand you mean what type of service?

Q. What do they do about it?

A. The agent requests the engineering department for the company to make inspections of certain equipment that they have procured applications of insurance for and the company makes the inspection to determine whether or not the equipment is insurable and also makes recommendations as to the improvement of the equipment. That is purely technical work and the engineers are the only people, and [fol. 370] particularly boiler men, that can make that inspection and determine any necessary improvements or whether or not the equipment is insurable.

Q. Do you know whether or not it is customary for the insurance carrier to periodically inspect, through its service department, elevators, boilers, machinery and other risks that are covered by their policies?

A. Yes, sir, they make at least annual inspections and sometimes semi-annual inspections. If the equipment is treacherous or not in excellent condition they may make three or four inspections annually.

Q. Mr. DeJarnette, what casualty companies or insurance companies do you represent?

A. Employers Liability Assurance Corporation.

Q. Is that company one of the plaintiffs in this suit, or not?

A. No, sir, they are not a complainant.

Q. Has that company been sending you contracts for countersignature and paying you fifty per cent of the commission since the 1938 law went into effect?

A. Yes, sir.

Q. I wish you would state what has been the view of you and members associated with you in your office as to what you should do about a contract that was sent to you for countersignature since the 1938 law became effective?

A. Until recently we have not done anything but countersign the contract and check it as to its correctness to see that [fol. 371] the proper rate was applied. We did not contact the assured and in one case we found an automobile rate written too low. The car was garaged in the City of Richmond and carried a remainder of the state rate which we called the company's attention to and it was corrected to carry the City of Richmond rate.

Q. Has it been customary in your office to examine the contract and see whether or not there appeared to be any irregularities about it of any kind?

A. Yes, sir, we check every contract, keep a complete copy of the contract, and see that all the rates and forms are applicable to Virginia requirements and, in case that they were not, we communicate with the company from which the business came, correcting the forms or rates.

Q. Have any of the assureds under any of those contracts contacted your office in any way in connection with these contracts?

A. Yes.

Q. Just state what instance, if any, has happened in that connection. You need not name the assured unless you desire.

A. We had a case where a Richmond organization, not a chain organization, through a New York broker, had sent our office a policy to be countersigned and very shortly after the policy was countersigned a claim occurred and the assured communicated with me and we put them in touch with the Claim Department and saw that they received proper [fol. 372] service on the claim. He then wanted to know the cost of increased limits on the risk and we gave him that information. Then he wanted to know why we couldn't handle the business for him directly and not have it come through some New York broker and we told him in that particular case that we were associated with the New York broker and he was entitled to the service of our office and our office was responsible to him for the correctness of his

policy; for the proper classification of the risk and also for claim service or any other service our office could render him, but we would have to pay the New York broker one-half of the commission on that business because the business had come to us through him and we would not take it from him on a renewal but would protect the interest of the New York broker.

Q. Since this new law became effective has there been considerable discussion among the Virginia resident commission agents as to what status they occupy with respect to these contracts which have been sent or may hereafter be sent to them for countersignature on account of contracts negotiated outside of Virginia?

A. Yes, there has been considerable discussion and the manager's office of the Virginia Association of Insurance Agents has been constantly flooded with letters from agents over the state asking his interpretation and what must be done and what their rights were and the construction of the law.

Q. Did you and the manager and some other agents consult the Attorney General of Virginia with reference to this subject?

[fol. 373] A. Yes, we did.

Q. What action, if any, was taken by the Association?

Mr. Christian: That question and answer are objected to as immaterial. Will not Mr. Staples relieve me of the necessity of repeating this objection about these transactions between him and the agent?

Mr. Staples: Yes, I regard counsel as objecting to all of this testimony.

A. At a meeting of the Board of Directors of the Virginia Association of Insurance Agents, which is composed of nine directors, a President, a Treasurer and a Chairman of the Board——

Mr. Christian: If it is proposed to show what was done at meetings of Board of Directors of this organization of which the witness is a member, it is insisted that the organization should be identified and its rights in this action stated, and it should either be shown that it took no minutes of its meetings or the minutes of the meetings should be introduced in evidence to show what they did at their meetings. These are additional objections to the present ques-

tion and answer in addition to the general objection that none of it has anything to do with this case.

A. (Continuing) —a resolution was passed which definitely outlines the duties of a Virginia resident agent in connection with handling business produced by non-resident brokers licensed in Virginia.

[fol. 374] Q. I show you a copy of what purports to be a resolution passed by the Board of Directors of the Virginia Association of Insurance Agents, Incorporated, passed February 13, 1939. The correctness of this is certified to by Oscar H. West, Manager. I will prove the correctness of this copy by Mr. West later on during the taking of the depositions. Inasmuch as you were present at the meeting, however, I will ask you to state whether or not this appears to be a correct copy of the resolution?

Mr. Christian: The objection is renewed to the introduction of the paper and I again emphasize its utter immateriality because of the fact that none of these requirements purported to be herein set up are made by law and compliance therewith would be no part of the obligation for which consideration is paid when a countersignature is furnished.

A. This is a copy of the resolution passed unanimously by the Board of Directors.

Q. That resolution, I believe, was drawn in consultation with the Attorney General or a tentative resolution similar to that was drafted on such consultation, was it not?

A. Yes.

Q. Do you know whether or not a copy of that resolution has been mailed in a bulletin sent out by the Virginia Association of Insurance Agents, Incorporated, to members under date of February 17, 1939?

A. Yes, sir, my office received a copy this morning.

[fol. 375] Q. Prior to the enactment of the 1938 Act and the time same became effective had there been any practice of countersignatures of contracts of this type by commission agents in Virginia to such an extent to establish a custom bearing upon the duties and responsibilities of a Virginia resident commission agent in relation to casualty and surety contracts negotiated outside of Virginia?

A. In my opinion I would think there had not been a sufficient volume to determine such a procedure or practice. As I explained before, in most cases where resident agents

had countersigned policies they had a definite tie-up with the broker or with the assured and they knew definitely before they countersigned a contract what their obligation was by agreement with the broker or assured.

Q. Has the Virginia resident commission agent ever regarded his duties and obligations to the assured completed upon the mere execution and delivery of the policy or contract of indemnity?

A. No, sir. We realize when we effect a policy that we then cite to the assured that our office will be at his service during the life of that contract.

Q. Generally speaking, when an agent in Virginia procures a casualty contract, in the course of his study of the subject of the risk, is it customary or not for him to make any suggestions as to changes in the contract or policy provisions or rates or any other matter which may arise during the life of the contract to which the assured may become entitled?

[fol. 376] A. Yes, the agent fits the contract to meet the requirements of the policy holder. Also there may be changes as to rates and forms or certain privileges extended during the life of the policy that may or may not apply to existing contracts. However, if they are applicable to existing contracts, the agent immediately notifies his policyholders that the policy has been extended to cover this particular feature, whatever it may be.

Q. Is it or not true that riders are frequently attached to a contract to cover changing conditions?

A. Yes, sir.

Q. I will ask you whether or not from your general knowledge of the business of commission insurance agents of Virginia, it is your opinion that the agents throughout the state, generally speaking, will abide by the obligations which the Board of Directors of the Virginia Association of Insurance Agents has decided are imposed upon them under the 1938 Act?

A. In my opinion, they will. They look to the Directors and officers to formulate general practices and principles in reference to that business. The Association office is headquarters or clearinghouse for all suggestions from the agent members and suggestions from elsewhere that may improve or better the business and many good ideas come out of that office for the improvement of the business. Agents generally abide by their decisions.

Q. Subject to the proof of the correctness of the resolution contained in this bulletin, I will ask you to state whether or not this is a copy of the bulletin which has been sent to the members of the Virginia Association of Insurance Agents?

A. Yes, sir, this is similar to the copy received by my office from the Virginia Association.

Q. I will ask you to file this as Defendants' Exhibit A with your testimony?

A. I will.

(This paper was filed and marked Defendants' Exhibit A.)

[fol. 376a] DEFENDANTS' EXHIBIT "A"

February 17, 1939.

To All Members:

House Bill 151. At a meeting of the Board of Directors held in Richmond, Monday, February 13, 1939, the Board passed unanimously the following resolution:

Resolution

Whereas, Under the 1938 Virginia law the Virginia resident agents are required to be associated with Virginia licensed non-resident brokers in connection with all fire, casualty and surety contracts insuring Virginia risks whether the same be negotiated exclusively by such non-residents or not; and

Whereas, The Virginia resident agent is required by said law to be paid at least 50% of the usual commission for same; and

Whereas, Some question has arisen as to the functions and duties of the Virginia resident agent in such cases and this Board has been requested by numerous Virginia agents to define resident agents' duties and functions in such cases,

Now Therefore be it Resolved:

(1) Whenever a Virginia resident agent is requested to countersign such a Virginia coverage contract he shall consider himself associated with the non-resident agent or broker who negotiated same. In all cases where a Virginia agent is associated in the writing of a Virginia policy or contract by a fire, casualty or surety insurance company or a non-resident Virginia licensed broker, the Virginia agent shall, before countersigning the policy or contract, contact

the assured or his Virginia representative, if practicable, and familiarize himself with all pertinent facts relating to the policy or contract. Thereupon he shall carefully examine the policy or contract to ascertain whether same is in proper form, correct as to rates and coverage and is best adapted to the proper needs and requirements of the assured. He shall make such suggestions as to any changes therein, as he may deem advisable.

(2) Throughout the life of any such contract the Virginia resident agent shall be under the same obligations to the assured with respect to servicing the contract as he would be if he alone had negotiated it. Where a Virginia resident agent is associated with the writing of such contract by a Virginia licensed non-resident broker, he shall respect the ownership of the expiration by such non-resident broker as is incorporated in the principles of the American Agency System and when requested by such non-resident broker render his assistance to secure the renewal or continuance of the contract.

Very truly yours,

(Signed) Oscar H. West, Manager.

[fol. 377] Cross-examination.

By Mr. Christian:

Q. Please say whether you are or are not a general agent for the National Surety Corporation?

A. I am not a general agent for the National Surety Corporation.

Q. What are you with reference to it?

A. A regional agent.

Q. What is your agency relationship to Employers Liability?

A. General agent.

Q. What local agents, other than mere solicitors employed by you, report to you or are supervised or assisted by you for the Employers Liability or for the National Surety or both?

A. You want me to give them by name?

Q. You can state the number first, if you want to. I am not talking about solicitors; I am talking about people who have contracts with the company?

[fol. 378] A. Under our set-up now all of our solicitors have contracts with the company. I think I am correct in

that statement. We have about four or five that we license as agents, two of which are domiciled in our office and three of which are not domiciled in our office.

Q. With what company do they have contracts?

A. Employers Liability Assurance Corporation. They are Blake & Dudley, Inc., L. W. McVeigh, Inc., and Thomas T. H. Hill. There may be others but they are all I can recall at the present time.

Q. Those are real estate agents that also conduct an insurance business in Richmond?

A. Yes, sir, in two cases. The other case is a man who lives outside of Richmond.

Q. What is his business other than insurance business?

A. He happens to be the Deputy Clerk of King William County.

Q. And as a side issue he is an agent under you of the Employers Liability?

A. Yes, sir. I think you would say as a side line he writes insurance. However, Blake & Dudley and L. W. McVeigh, Incorporated, both have insurance departments, keep all records and write fire insurance as direct representatives of companies. Their volume is not sufficiently large to have a general agency contract and, therefore, we are able to handle the business for them on an agency contract.

[fol. 379] Q. Will you give the information as to what is the maximum amount of annual premiums on casualty and surety risks for any one assured that are paid through your office?

A. One year one client paid me twenty-four thousand and some hundred dollars.

Q. When was that?

A. That has been some years ago.

Q. I am talking about the business that is permanently in your office, Mr. DeJarnette. I am trying to get an idea of whether you are a representative, by and large, of the small assured or the medium sized assured or large assureds with national coverage.

A. If you refer to my experience, for nine years I was employed by Tabb, Brockenbrough & Ragland who, I suppose, are one of the largest agents in the state and at that time I had contact with certainly some of the larger assureds of Virginia. My office at the present time, conducted

as DeJarnette & Paul, doesn't enjoy as many large accounts as those larger offices enjoy.

Q. Do you enjoy any large accounts?

A. Yes, sir.

Q. Won't you please say what is the largest annual premium involved?

A. I couldn't tell you that, Mr. Christian, without going to my records.

[fol. 380] Q. Are you able to say in how many states the coverage placed with you by any one assured is located?

A. Several.

Q. Several states?

A. Yes, sir.

Q. You say you have as many as one assured which has coverage in several states?

A. Yes.

Q. By that word "several" do you mean three states or four or more or less?

A. More than that. I couldn't name right off how many there are without going to my records.

Q. How many assureds are there that you represent that have coverage in several states?

A. I couldn't give you that information without going to my records.

Q. Could you say whether it is one or more than one?

A. I should say there are several.

Q. Can you say what sort of risks they are?

A. Casualty risks.

Q. What lines of casualty insurance?

A. Automobile, general liability, compensation, burglary, surety.

Q. You said on your examination in chief that you were informed that casualty agents, generally speaking, never countersigned casualty contracts?

A. That is my understanding.

[fol. 381] Q. I will ask you whether there are any casualty insurance agents in Richmond that you think are leading agents in the sense that Gibson, Moore & Sutton and Davenport and Tabb are, or aren't those three distinctly leading agencies in Richmond?

A. In what particular?

Q. From the standpoint of volume?

A. I should say they produce the largest volume of any three agents in Richmond.

Q. Do you know whether Davenport countersigned before this Act was put in operation or not?

A. I think my memory serves me correctly in stating that they did not.

Q. I will ask you the same question about Gibson, Moore & Sutton?

A. I never heard that they did and I can't remember that I ever heard that they didn't.

Q. I ask you the same question as to Tabb?

A. I heard Mr. Tabb today say that he didn't countersign any.

Q. So you are certain that Tabb does not countersign?

A. Yes, he told me that.

Q. And you don't believe Davenport does?

A. I worked for Tabb for nine years and we didn't countersign any then.

Q. You don't believe Davenport countersigned any before this Act and you don't know about Gibson, Moore & Sutton?

[fol. 382] A. Only in those cases, Mr. Christian, where the broker associated the agent with him, due to the contact that the agent had with the assured or due to other reasons that I cited in my direct testimony.

Q. And outside of Richmond you don't know anything about the big agencies?

A. Except what I have heard the agents themselves say.

Q. I asked you about Perry and Justice. Aren't they the two biggest agencies outside of Richmond in the state?

A. I wouldn't say so.

Q. Who would you say is—Lunsford?

A. I expect Lunsford is one of the biggest.

Q. Is there any reason under this new law to think that the generality of the hundreds of agents throughout the state of the various companies will countersign this business that is produced outside of the state or isn't it more plausible to think that each company will have a few of its agents, out of the much larger entire number of its agents, who will do all of the countersigning for the companies?

A. My information is that the companies will send the countersignature business to the agents that can best serve the assureds; in other words, those assureds in their vicinities.

Q. How would you work that where a fleet risk covers all over the state of Virginia?

A. What type of fleet?

Q. Automobile fleets. I don't know of any other kind.

[fol. 383] A. It would be given, from my information, to the agent nearest the risk, where the home office or the Virginia office is.

Q. I understood you to say that a premium rate is arrived at by adding together the pure loss ratio or pure premium and the acquisition cost; is that correct?

A. Right.

Q. Do you consider taxes and license fees as a part of loss ratio in your definition or acquisition cost?

A. They are not in the pure loss premium, as I understand it.

Q. Do you understand that they are in the acquisition cost?

A. Yes, sir.

Q. Where do you understand that the factor of profit and contingency is included—in the loss ratio or the acquisition cost?

A. It might be in both. For instance, if they go over to the Corporation Commission with a formula that the rates are predicated on a sixty percent loss ratio basis and at the end of the year the loss ratio was only forty-eight percent, then they would make a twelve percent profit out of the loss ratio end, but the actual profit, as I understand it, as permitted by the law, is put in the acquisition cost.

Q. Where do you understand the expense of home office administration is included—in the pure premium or loss ratio or in the acquisition cost?

A. I understand it is in the acquisition cost.

Q. Where do you understand the unallocated expense of [fol. 384] claim adjustment is included—in the loss ratio or acquisition cost?

A. I understand it goes in loss ratio. Contingent contracts are so charged, as I understand.

Q. Did I correctly understand you on your examination in chief to say that when you want to sell an automobile liability policy that you told your prospect that you would inspect his cars and drivers for him during the life of the policy, that you yourself would do that?

A. My office does it to a great extent and then on fleet risks whenever a safety talk is made my office, in numbers of cases, makes those safety talks.

Q. When your office inspects these cars during the life of the policy, what does it inspect them for?

A. Well, if we find a risk with the bumpers of the cars all bent up and the fenders all bent up, we know then that they have been having frequent accidents, a lot of times from which no claim has been reported, and we check that to determine whether or not the prospective assured knows what kind of risk it is. For instance, if we write a risk and the company notifies us that these people have had a bad experience, then we are embarrassed to have to take up the policy. We try to ascertain that information before insuring the risk.

Q. Am I correct then in my understanding that the purpose of your inspection is to see whether the bumpers are battered up? Is that the purpose of this inspection that goes on through the life of the policy?

A. No, sir, but you asked me, as I understood it, before the policy was issued.

[fol. 385] Q. No, I stated this to you, that I understood you to say when you were soliciting the prospective assured it was a part of your sales talk to him to tell him that you were going to inspect his cars and drivers during the life of the policy.

A. In numbers of cases we check the motor numbers to see that they are proper and check the equipment to see whether or not the description of the equipment is correct.

Q. That is at the outset of the risk?

A. Yes.

Q. I understood you to say you did that during the life of the policy?

A. That is correct.

Q. What are you doing after the policy is in effect and during its life? What sort of inspection are you making?

A. After the policy is in effect?

Q. Yes.

A. Our office doesn't make inspections but the engineering departments will make inspections to determine what kind of condition the equipment is in.

Q. I am asking you whether you do tell a prospective assured or not that you are going to inspect the cars throughout the life of the policy? Did you intend to be understood as saying that or not?

A. It depends entirely upon the risk, Mr. Christian. If we know that the risk is one that does require inspection we do tell them that. If the risk doesn't require, in our

opinion, that inspection, we don't make any personal inspection but the engineering department which we have charge of and whom we direct to make inspections, and who [fol. 386] make them in connection with our office, does do that. For instance, our engineer will come into our office and say, "Mr. DeJarnette, I have an inspection slip for eight, ten or fifteen risks," and he will want to know something about the risks. I will give him that information. In a number of cases we go with him. For instance, when the pay roll auditor comes we lots of times go with him to the risk.

Q. You made a statement just now that you claimed you had authority over the engineering department of your company; is that correct?

A. So far as our risks are concerned, yes.

Q. They have to obey your orders?

A. They have to obey our orders so far as the inspection and handling of our risks are concerned. They have certain routine prescribed by the company that we have nothing to do with. The company may say that the risk may be inspected twice a year or four times a year. We can't stop that but whenever any recommendations are made to our assured, we get a copy of these recommendations and we take up those recommendations with the assured to see that those recommendations are complied with, if reasonable. If we don't think they are reasonable we see that they don't comply with them and explain to the company and show the company why those recommendations are not reasonable.

Q. That is the extent of your authority over the engineering department?

A. I wouldn't say that covers the whole scope of it but any time we want to order an inspection we have the privilege of doing it. If I have a risk like I did this morning——

[fol. 387] Q. Do you have the power to hire and fire engineers?

A. No, sir.

Q. Do you have the power to say how they shall come and go and when they shall come and go?

A. In reference to our risks.

Q. Do you determine their salaries?

A. No, sir.

Q. What you really mean is that under the regulations of your company the engineering department is supposed

to comply with the proper requests of the producing agents and furnish them cooperation, isn't it?

A. If that engineer planned to go to Norfolk today and I have a risk that I think is of sufficient importance to ask him to cancel that trip to Norfolk, I do it and he makes an inspection of that at my request without going to his home office or without getting permission from his home office. He knows in his own mind from the nature of the risk whether or not my request is reasonable.

Q. Suppose he doesn't think it is reasonable?

A. I have never had one object to it that I know of.

Q. About this matter of your getting releases signed in third party claims, is it the habit and practice of your company, when a liability assured has a claim made against him and the claim is considered good in law, to ask you to negotiate the settlement and procure the release?

A. We have a gentleman's agreement with our company when they pay out money to a third party that we are notified that they are going to settle the claim with such and [fol. 388] such a party. They tell us about it and if we think it is to our advantage to take those releases and go to that party, we have the privilege of doing it and in numbers of them we do get the releases signed and deliver the drafts.

Q. The purpose of that, I take it, is to enable you to make contacts and get new business, isn't it?

A. That is partially the purpose of it, yes, sir.

Q. You are doing that because you want to do it, are you?

A. A company doesn't require me to do it. They think it is to their best interest to let me do it and, therefore, they acquiesce in my request.

Q. How is it to their best interest? Because you are so expert that you will get the right man to sign that thing and get it in the right form and they couldn't do that without your help, or are they helping you form new contacts?

A. I just answered that I used it for contacts.

Q. Is it a business-getting thing for you?

A. Not entirely. I want to see that my assured is satisfied with the settlement. We have had numbers of cases where a company claim man went out and settled a loss and he went ahead and paid the claim without our knowing anything about it and then when we went, at the end of the year, to the assured and said, "We paid out $700 on this claim," he threw up his hands and hollered and said, "That claim wasn't worth $700; your adjusters have paid too

much money and we want you to watch those things. This is our premium you are spending. Our rate is reflected by these claims that are paid out and we don't want you to let these things be paid unless we know something about it." That is the reason we make that requirement, or one [fol. 389] of the reasons.

Q. In reference to what you said, I want to know when you make those inspections that you have explained to this prospective assured that your office is going to make, what you are looking for?

A. We are looking for the condition of the equipment how the drivers are handling the equipment, whether or not new equipment has been substituted, whether or not equipment has been changed. Some equipment takes one rate and some takes another and the only way you can properly service a risk and see that the proper premium is charged and that they are getting the best efficiency out of the equipment as to accident frequency and the type of drivers that they use is by inspection and you have to be in personal contact with those.

Q. Who does that, the producing agent or the inspection and engineering department of the company?

A. In my office we do it ourselves for our own information, for our own knowledge of the risk. A company also, in a number of cases, sends its inspector to inspect the equipment.

Q. You carried some liability on my car for a number of years, didn't you?

A. Yes, sir.

Q. You never inspected it in your life did you?

A. Yours wasn't fleet risk.

Q. You don't do this except on fleet risks?

A. That is the only way we do it. We couldn't go about inspecting individual cars, no sir. I thought you were referring to fleet risks. Fleet risks are the only ones that [fol. 390] take an experience rating.

Q. And you claim to be qualified to conduct inspections of that sort and that is a part of your duty, as a producing agent, to make those inspections?

A. Yes, sir, we do it constantly.

Q. And you claim that is so of all producing agents?

A. To my knowledge, I expect they do. I offer that

service from my office and they have a fair share of the business. I expect they offer the same service from their offices.

Q. How did you acquire the knowledge of gasoline engines and mechanical knowledge sufficiently to conduct these inspections?

A. I don't claim to have any knowledge of gasoline engines.

Q. Do you dress in overalls and get down underneath the car when you make the inspection?

A. No, sir.

Q. You just stand off and look at it?

A. Well, it depends entirely, Mr. Christian. For instance, a four-wheel truck takes one rate and a six-wheel truck takes another, what we call a tractor and trailer. The average assured doesn't know that unless he has had experience. I have had numbers of cases where I was traveling down the road and I saw a name of my assured on a truck going down the road and I immediately remembered that I didn't have that type of equipment covered; I didn't have a trailer covered. I immediately went to him and told him that that equipment had to be changed and any time when we see our risks about the streets we watch them to see what they are engaging in.

[fol. 391] Q. And that is what you mean when you speak of inspecting?

A. Oh, no. I say that causes inspections.

Q. Do not the owners of these fleets have people who spend their lives as mechanics and it is their business as automobile mechanics to see that those cars are kept in proper shape?

A. Very few of them. Some of the larger national risks do but very few of the Virginia risks have that type of service.

Q. Do I understand that you hold out to your assureds that you are going to inspect their equipment from a mechanical standpoint and ascertain defects in the equipment and things that ought to be done to make it operate better?

A. I have one fleet on my books that I personally inspect every sixty days, as to the condition of the rear view mirrors, the condition of the windshields, the condition of the stop lights and the condition of the brakes.

Q. Does Employers Liability Assurance Corporation have an engineering and inspection department?

A. Yes, sir, domiciled in Richmond.

Q. And is it the duty of that department in Richmond to do what you are talking about?

A. Yes, sir, and they render a further service. They go into that same thing but here is the situation; if I take a risk and let it develop a bad loss ratio, then the company says, "We don't want that risk," and we do this so that we can try to give the assured an additional service to keep the risk good. We know that those things do keep the risks. They tell.

Q. Where did you get the training to enable you to say whether the equipment is in good shape mechanically or is not?

[fol. 392] A. Just by experience. I think you can tell, if you look at the rear view mirror, whether it is cracked or not, whether it is badly worn. Some of them have this quicksilver on the back of it and that wears out and a man can't see. You can look at that.

Q. Do you also do boiler inspections for your assureds?

A. No, sir.

Q. Elevator inspections?

A. No, sir.

Q. You confine yourself to automobiles?

A. Not entirely. We inspect compensation risks too.

Q. Do you employ any mechanics to assist you or do you do that personally?

A. No, sir, my partner and I do it.

Q. Haven't you been serving in the Legislature up here for good many years?

A. Not for a good many years. I served one term.

Q. I suppose you get somebody else to do it while you are serving up there?

A. I lost a lot of money when I was serving in the Legislature.

Q. About these changes in the equipment, am I not right that an ordinary fleet automobile policy has an automatic provision for coverage of new material?

A. Yes, sir.

Q. And coverage of that new material at the appropriate rate?

A. Yes.

Q. So to the extent that your inspection is desired to procure that for the assured, he would get it anyway, wouldn't he?

[fol. 393] A. That is adjusted at the end of the policy period.

Q. About this checking up of the contract when you are asked to countersign policies covering in Virginia but produced outside of Virginia, that is being done day by day and year in and year out as to all automobile contracts by the Virginia Rating Bureau, is it not?

A. I understand that they determine whether or not it is correctly rated.

Q. They are doing just what you said you did?

A. Not all of it.

Q. They are supposed to do it, aren't they?

A. I don't think so.

Q. What about the workmen's compensation contracts? Isn't there a similar bureau that is supposed to check up all of them and see that they are in proper shape?

A. They don't go to the risks themselves and determine whether or not the classification is correct. For instance, the manual states that if you have certain nurse's or doctor's services you get a credit in the rate and you find a risk sometimes that may be furnishing that service and yet obtaining no credit in the rate.

Q. Wouldn't they catch that just as well as you could catch it? Isn't that what they are supposed to do.

A. I knew a case that went on for about six years in Virginia that nobody caught and a live-wire agent caught it and got the business.

Q. Wouldn't they be supposed to catch this case that you told about where you found out recently an inadequate rate [fol. 394] was being charged on an automobile policy?

A. I imagine that they do. I don't know definitely. Of course, all of those bureaus are subject to error and all of those bureaus make numerous mistakes constantly. Sometimes there is the wrong information on the policy.

Q. About this Richmond organization which asked you if there wasn't some way he could deal directly with you instead of dealing through the broker and you told him no, that, as far as you were concerned, you had gotten the business from the broker and would have to respect his rights? Do you remember that case?

A. Yes, sir.

Q. How do you opine that that organization was dealing through that broker if he didn't want to?

A. I think it was a class of business that probably wasn't pretty generally written.

Q. But you think that Richmond organization went up to New York, or wherever it was, and dealt with that broker because it wanted to, don't you?

A. It was a specialist class of business. All of the other business is written locally.

Q. You didn't point out to that party that the New York broker was better qualified than you to handle that risk?

A. We didn't get into that discussion. I told him that my service was his service. He evidently thought I was well qualified. He called me, although he didn't buy the contract from me.

Q. What sort of business was that, that concern?

A. I still think that is a matter of private contract, isn't it?

[fol. 395] Q. Yes. I just asked you whether it is a bus line or tobacco factory or beauty shop or what it is?

A. It was a merchant.

Q. A retail merchandising store.

A. Yes.

Q. Not a member of a chain, you said?

A. No, sir.

Q. You spoke of your territory including Henrico and, I think you said, five adjacent counties. Does your territory include the city of Richmond?

A. Yes, sir.

Q. Is this business you have been countersigning since the Act went into effect all covered in your territory or is some coverage outside of your territory?

A. I think there are one or two cases outside of my territory, premiums amounting to $10 each.

Q. Where are the locations of those coverages?

A. I think those were some bonds in Arlington County, probably license permit bonds or something of that type.

Q. Did you make any check-up of the contents of those bonds with the parties interested in the bonds to see that they were proper forms of bonds?

A. We determined that they were the proper permit bonds as required by the state but as to the actual conditions surrounding that bond, it didn't make any difference. It was just a license permit bond and it wasn't necessary.

Q. You mean an automobile license or what?

[fol. 396] A. No, sir. I think one of them was a material bond, to furnish materials to some particular people—supply bond, I think they call it, and the other one was a cleaner's bond, I think it is, required by the state. I am telling you from memory.

Q. Why did they happen to send those bonds to you instead of to Arlington agents?

A. As I understood, through mistake they were sent to the home office or, at least, the branch office of the company here and they couldn't countersign them and I countersigned them for them.

Q. Do you know how many agents all told the National Surety has in Virginia or the Employers Liability has in Virginia?

A. I imagine that the National Surety has more than a hundred. I think the employers probably has a few more than a hundred.

Redirect examination.

By Mr. Staples:

Q. Mr. DeJarnette, you spoke of the pay roll auditor inspecting the books of an assured under a workmen's compensation policy. Why was that auditor inspecting those books?

A. The compensation policy is written with a deposit premium and at the end of the year the books of the assured are audited to determine the final adjustment of the premium.

Q. Who does that auditing?

A. A company representative.

Q. Is it necessary for the insurance carrier, under a policy of that type, to examine the books of the assured in order to determine the amount of the premium?

[fol. 397] A. Yes, sir.

Q. Then, as I understand it—or do I understand you correctly—in every case where an insurance carrier issues a policy under the workmen's compensation law of Virginia it is necessary for the insurance company's auditors to examine the pay roll accounts in order to determine the proper premium at the end of the year or any given period; is that correct?

A. That is correct, yes, sir.

Q. Do you know of any type of casualty insurance policy in which the companies do not render, through their servicing departments, some service in Virginia in connection with the policy if it is a Virginia coverage policy?

A. You mean claim and inspection service?

Q. Any type of service, including claim and inspection service?

A. Small residence burglary policies or residence general liability policies are not inspected by inspectors.

Q. Suppose there is a loss?

A. If the loss occurs then it is reported to the agent's office and the agent reports it to the claim department and the claim department handles it in cooperation with the agent or possibly direct.

Q. What do you mean by a residence general liability policy?

A. A policy that protects the residence owner from suit by injuries on his premises to anybody other than his family or his employees, such as the milkman, the news boy, salesmen, or it is possible to be sued from doing work on premises.

[fol. 398] Q. Doesn't the insurance carrier in most cases undertake to defend the suit that is brought?

A. Yes, sir.

Q. That is, through their legal department or through legal employees, they do render that service in case of any loss happening under the policy; is that correct?

A. Yes.

Q. In a case of a plate glass loss those policies usually provide that the company shall have the option either to pay the amount of the loss or to replace the glass, do they not?

A. I think so, yes, sir. It is customary in all cases to replace the loss. I don't believe I ever knew of an insured taking a cash settlement rather than replacing the glass. I can't think of any.

Q. Mr. Christian asked you about fleet policies which provide automatic coverage for additions to the fleet. In the event of the acquisition of a new truck, in the case of a fleet policy, or a half dozen new trucks and an increase in the premium by reason of that, what becomes of the commission on that increased premium?

A. It goes to the producing agent.

Q. The original producing agent?

A. Yes. The same thing happens to the additional premium under a compensation audit. It is collected by the agent and paid through his account and he takes a commission on it.

Q. Then the mere fact of acquiring a new truck or trucks or vehicle and adding them to that fleet amounts automatically to a new contract of insurance insofar as those new trucks are concerned, does it not?

[fol. 399] A. Yes, sir.

Recross-examination.

By Mr. Christian:

Q. When you made reference a while ago, I think, to Blake & Dudley as general agents, did you mean they have a commission scale of a general agent?

A. I didn't make that reference to my knowledge.

Q. What is their status?

A. They are agents under my office.

Q. With a local agent's commission schedule?

A. Yes, sir.

Q. Having reference to what Mr. Staples asked you about customs and practices of the companies in respect of acts performed in the localities of coverage, do you know of any contract that either your surety company or your casualty company issues that requires the company to do anything in the State of Virginia? If you do, then I will ask you to introduce the contract form in evidence.

A. You mean my contract with the company or the contract that is sold the public?

Q. No, I mean the surety bond or the casualty insurance policy of either of your companies. Do you know of any that you can introduce in evidence here that requires the company to do anything in Virginia? I will exclude from that the liability policies and their requirement that suits be defended which, of course, must be done either through an agent or through an independent contractor.

[fol. 400] Q. Go ahead and say whether you have any contract you can introduce in evidence that obligates the company to do a single thing in the place of coverage with the exception of defending suits.

A. To my knowledge there is no specific requirement of inspection service or proper rating or proper classifica-

tion of the risk but competition has been so keen in the business and common usages and practices require that these things be done to control the business.

Q. As a matter of fact, if the company wanted to, it could pay claims and not defend the suits, couldn't it, even under the liability policies?

A. Yes.

Q. But you don't know of any contract that requires anything to be done in the state of coverage that your companies issue?

A. There is no contract, as I stated before. The practices in the business require these services be rendered for the agents and companies to obtain the business.

Q. The practices of the companies also require that claim and inspection service be furnished outside of the place where the automobiles are principally garaged and used, if occasion for claim or inspection service arises in another state, don't they?

A. The inspections are made where the cars are domiciled. They have no way of contacting the car except where it is domiciled.

Q. The car doesn't have to stay in the spot where it is domiciled all the time, does it?

[fol. 401] A. No, sir, the rate is determined by the place that the car is garaged at night.

Q. But the service is performed wherever the car moves through the United States, where there is an occasion for such service, isn't it?

A. Oh, yes. If an agent of my company in New York had one of my assureds to call him, he would be glad to render service and I have done it many times for policyholders traveling in Virginia, having accidents. I have been called out of my bed at night and furnished bail bond service to policyholders of other companies. I have called other agents and gotten them in touch with the man for the company they represented that covered that particular car. Living up in Ashland, as I do, a number of accidents happening on Route 1, that is quite frequently done as the traffic officers up there know that I happen to know the agents of the companies and where they can find them and when an accident occurs they call me up and say, "Here is a man with a policy in a certain company. Can you tell me where he can get service?" I will refer them to the agent and if it is my company I handle it. I have done

that a number of times for the Travelers when I was with Garnett Tabb. Mr. Christian, I expressed today an unwillingness to tell you about the annual premiums of my firm and it seems to me it is proper I should tell you what they are and I therefore state that in the casualty and surety lines the annual premiums through my office are about $46,000 and in the fire lines about $45,000.

[fol. 402] ROBERT I. BOSWELL, a witness called on behalf of the defendants, and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. State your name, age, residence and occupation please?

A. Robert I. Boswell, Henrico County, Virginia; 40; general insurance.

Q. How long have you been connected with the insurance business, Mr. Boswell, and state generally the history of your connection with this business and different positions you have occupied?

A. I am completing my nineteenth year. I organized my own agency in '32 and subsequently Mr. Curtis, who had been with the National Surety as manager, came with me in 1935. The firm is now Boswell & Curtis.

Q. You are now occupying what particular relationship to what particular companies?

A. I am agent of the National Surety Company, New Amsterdam Casualty, Mechanics and Traders Fire, the Newark Fire, Globe & Rutgers for marine, the Sun for marine, and we do have an agency license with the Fidelity and Deposit Company. I have been strictly a commission man since 1932, not employed by a company.

Q. During what period of time covered by your experience have you been what is called a company representative or salaried employee of an insurance company or companies?

A. I was on a salary from October, 1920, until July 1, 1931, with various companies and in various capacities.

Q. In what capacities have you had relationships as com-[fol. 403] pany representative with companies?

A. I have just stated. I was first Special Agent and Manager for a state and manager for a New York office

and an officer in charge of a West Coast territory and then again manager for a group of states.

Q. You have then occupied relationships similar to those occupied by the branch managers in this suit, have you?

A. Yes, sir, I have been manager of an office in a city just as they are now. It so happens, however, that the company I was manager for was not a multiple line company like the National Surety. In the Consolidated we wrote all lines of casualty with the exception of compensation and boiler.

Q. What has been the nature and extent of your experience insofar as the same has reference to the customs which have been established in the business insofar as same relate to duties and functions of salaried employees such as company representatives and duties and functions of commission agents, their method of compensation and other relevant matters.

A. Of course, a special agent or manager works for one company, whereas an agent may represent several, as a general thing, unless if is a group. The functions of a salaried employee are to further the company's business, to appoint sub-agents, such as I am now, to report to him and to work with those agents, be available to the agent for service and in the majority of instances, identified particularly with the surety business, the branch manager would have a larger underwriting authority than the agent. The branch manager is the clearinghouse between the agent and the home office in the submission of certain bonds. [fol. 404] That branch manager is placed there for good reason by the company, to look out for the company's interests, to see that collections are made, to keep an eye out on the classes of business that the company believes to be more profitable, and to work with the agents in an effort to have them produce those classes by giving them the benefit of his wider knowledge. Does that answer it?

Q. That answers the question in part. What I had in mind particularly was the extent of your experience throughout the State?

A. Well, I was manager of the National Surety's office. I started first as a Special Agent. I traveled continuously for about two years. At that time I think there were five hundred and twenty-two banks in the state and I had been in five hundred and eighteen of them when I went to New York. There were a hundred county seats and I think I

had been in all but one. It was my duty to go around and get a favorable connection at every place where there was one available and, if there wasn't one available, try to make one. After that connection was made it was my duty to educate the agent, as best I could, in the lines of cover that he could solicit and which would be money-makers for the company, to make periodic check-ups with him, examine the court records and see that the bonds that he had signed were reported, to get termination evidence on the bonds as they were finished in the court, to see that his premiums were paid and be available in case of claims.

Q. When you were doing that work what position did you occupy?

A. I was first Special Agent and then Manager on a strict [fol. 405] salary basis.

Q. Did you receive any commission at all on any business that was transacted through your office?

A. No, sir.

Q. Did any other of the salaried employees of the company receive any commissions?

A. Not to my knowledge.

Q. Can you state whether or not the general custom of transacting the casualty and surety business in Virginia is similar to that which was adopted by your company?

A. The general custom, so far as I know, is that company employees are on a strict salary basis. I don't believe I have ever known of any change from that. I have heard of them but that wouldn't be evidence.

Q. If there are any such arrangements made, they are exceptions to the rule rather than the rule, are they not?

A. Yes, I would say so.

Q. What is the difference in the relationship of a special agent or a general manager or other company representatives to the company and a commission agent's relationship to his company?

A. Well, a commission agent is an independent contractual entity. He does not operate as a salaried employee. He is free to go and come as he pleases. He doesn't have to put in so many work hours unless he feels that it is encumbent on him to do so for his world's goods. The fact that a commission is involved would make him look with a brighter eye on some situations, whereas a branch manager of a company is there for many purposes, but one [fol. 406] of those is to protect, first of all, his company's

interests and not write any business that he doesn't believe the company will eventually make money on. I would say though, in defense of the agents that I have just maligned that in a number of instances his reason for writing business is sometimes a matter of ignorance on his part. He has not been schooled in the various lines that the company knows are danger points.

Q. What is the relationship between a branch manager or company representative and the resident commission agent in Virginia?

A. The difference is in the method of compensation, I would say, primarily. The branch manager gets a certain stipulated salary whether or no. That salary is usually based on his volume and whether the business produced is good business, money-making business. The commission agent is a very definite factor between the risk and the company. He is a guarantor of the premium and, in some instances, I imagine, the commission agent has as much authority as a salaried employee in his underwriting but that does not relieve him of the financial responsibility for the premium, whereas the company man, if he has a risk that doesn't pay, it just goes into past dues and not out of his pocket.

Q. Who does the commission agent usually report to where there is a branch manager in a state?

A. If there is a branch manager in the state it is almost an invariable custom that the commission agent reports to that branch manager. I imagine that there are exceptions to that. There are direct reporting contracts. In [fol. 407] our own agency we clear our daily reports on all business through the two offices provided here by the company. It is more expeditious to do so and it saves postage.

Q. What contact does the branch manager have with the prospective assured, if any?

A. Well, that is rather difficult to define. In some instances he may be very close to the prospective assured. He may give the agent a tip that will result in eventual writing of the business but, as a general thing, he is there in an advisory capacity to assist the agent and call on the assured with the agent, to check on the agent and see if the agent is making any mistakes in the presentation of coverage and give the agent rates. He doesn't do any soliciting as such, except through the agents. That is established practice. But there are, of course, risks that are influenced

by the salaried man for the commission man's account. That is inevitable.

Q. His contacts then, as I understand it, with the prospective assured are on behalf of the commission agent, generally speaking, so far as the compensation to be derived from the business is concerned?

A. That is correct. Our companies advertise that fact very extensively, that they take no direct business.

Q. What do you conceive to be the established custom and practice with reference to the functions and duties and obligations of the commission agent in Virginia to the assured or the prospective assured?

[fol. 408] A. The commission agent is operating in more or less a dual capacity. If possible, he is representing and acting as a buffer between, should there be trouble, two masters. He must look out for the interest of his company and he must look out for the interest of his assured. The first thing that he must do is to inveigle the assured into believing that the business should be placed with him and to service that business through its continuance in a way that he is fairly certain of getting a renewal and in a way to give service if anything should happen. Of course, it is a very highly competitive business and a contract of insurance is nothing more than a piece of paper until something does happen and when that takes place it is certainly up to the agent to see that all hands are amicably taken care of.

Q. Would you say that he is an impartial agent as between the assured and the insurance carrier or that he is partial to either one or the other?

A. Mr. Staples, I believe that would depend on various cases. He should be impartial but there is little reason to believe that the right thinking agent who represents good companies is going to have any difficulty at all with either the assured or the company. My relationship is most pleasant. I don't think I have ever seen a legitimate claim denied in my life in my agency.

Q. What types of casualty insurance does the company you represent issue?

A. We write all forms, with the exception of boiler, for the New Amsterdam. We do have agency licenses with the [fol. 409] American Employers for boiler but our boiler business is negligible. It doesn't amount to anything. We

write accident and health, automobile, compensation, elevator, burglary, plate glass and general liability.

Q. Some question has been raised in this case as to whether or not a commission agent who writes a policy has performed his entire obligation or duty with respect to that policy as soon as the same is written and delivered to the assured or whether there is a continuing obligation and duty upon him during the life of the policy. I wish you would please state what is your opinion as to the established custom and practice in Virginia on that subject.

A. My thought is when a contract of insurance is on the books of an agency that the service of the agency has only just begun. Of course, it has started with getting sufficient information together to be enabled to intelligently write the contract and then it is definitely up to the agent to maintain a sufficient force to service whatever may happen under the contract during the premium year. We further try to make periodic visits to our customers to try to better their loss ratio and point out to them any unusual hazards that may be around their plants. We have been most successful in taking road contractors' compensation and, by intelligently presenting the idea of safety to the assureds, we have taken what at one time was supposed to be a very hot line and have been consistently making money on it for the company and, by doing so, we have contractors engaged in hazardous occupations that have large experience credits on their compensation policies.

[fol. 410] Q. What is the nature of service that you render in connection with these contracts you speak of with these contractors?

A. We have two men that are employed by the company, safety engineers. When a contractor comes to us for a bond and subsequent insurance, we have this man line up his job for him and he is usually there on the job before the contractor is. During the prosecution of the job there are periodic inspections and safety is talked to the foremen by the inspectors and safety engineers until they, in turn, kick out any laborer who is not behaving himself, and other safety precautions are recommended such as proper lighting, signaling, and things of that nature.

Q. To what extent is that service performed by you and men in your office and to what extent by the engineering service of the insurance carrier?

A: We are not charged, as agents, with performing that service but due to the fact that we feel we must keep up the contact on account of the highly competitive business that we are in, we invariably try to be on these jobs personally during their prosecution at least two or three times. The safety engineer reports to us if the assured is not using the recommendations that he gives him and then it is up to us to go in and, in a nice fashion, make the assured see that he is really spending his own money if his loss ratio goes up.

Q. Do you consider it one of the functions of the commission agent to see that the assured receives the full benefit of the engineering service which is provided by the insurance carrier?

A. Yes, sir, because it saves the insured money. After [fol. 411] all, that is one reason we are in business, I suppose, to point out to the assured where his premium dollar goes and how he can make that dollar go far.

Q. Is there any considerable factor of the premium which is devoted to the payment for that type of service by the engineering staff of the insurance carrier or do you have any knowledge on that subject?

A. I believe that in the rate structure there is a certain percentage allocated to that but I am not prepared to say how much in any of the various lines of insurance.

Q. What about the service of the commission agent in connection with contractors' bonds; that is, to insure the performance of a building contract, for instance?

A. Well, first of all, speaking for my own agency, we are given certain authority which is regulated by a letter of instruction. If we solicit a contractor's bond and are successful in getting the application from him, then we, first of all, see that the risk meets the financial requirements that have been set down by the executives of the companies we represent and we must then assure ourselves that the contractor is not biting off more than he can chew, that he is familiar with the work, that he has the proper type of equipment for the work. We must sell him on the idea that he does not want to overload himself and take on more work than he can finance. We try to demonstrate to him that we, as the surety, are lending him credit instead of cash and we want to make sure that he doesn't abuse that. We then, in a number of instances, advise with the contractor as to sub-contractors and sub-bids. We try to keep

[fol. 412] on hand a complete record of similar work that has been bid on as to unit price so that he may avail himself of that information.

Q. Do you, and other agents engaged in that line of coverage, familiarize yourselves with the various contractors who might be called on to bid on a building or construction contract and just to what extent do you do that?

A. After a certain period of time in business you get to know the contractors and what part of the contract your general contractor will be interested in and you develop a type of clientele among the subcontractors who are willing to give prices with immense profit to the general contractor. We try not to do business with contract brokers that get a job and "sub" it all out at rock bottom, hard squeezing, prices. We try to keep both the general and subcontractor happy.

Q. Do you have any considerable number of those contracts or construction bonds which come from contractors who live outside of the state or engaged principally in business outside of the state?

A. We do have some very good clients that are not domiciled in Virginia. As a general thing most of them come from North Carolina, for some reason.

Q. Are any of those sent to you by North Carolina insurance agents?

A. No, sir, we endeavor to bring the idea of our service before the contractor who is up here from North Carolina and try to get him, of course, to do business with us and in [fol. 413] a number of instances, if he has some local agent who has been taking care of him down there and he wants that local agent to share in the commission here, if that agent is properly licensed by the state, we are agreeable to letting that be brought about.

Q. Do you render a man of that kind the same type of service, even if there is a North Carolina agent associated in the contract?

A. Yes, sir, as a general thing, we render him more service because he is in a strange land and he doesn't know the usual ramifications of the business here as well as he does in his own state. To continue, I think that it is very good sense for the contractor to identify himself with a local agent, due to the fact that we can be of considerable service to him. I have traced many hundreds of thousands of dollars of estimates through the Highway Department

and have gotten checks mailed out to our client several days before he would have received them otherwise, which permits him to take discounts and when you take discounts you save money. The checks would have eventually gotten to him, of course, but when the desk of the estimate clerk is cluttered up, it is a pretty nice thing to get $30,000 of money maybe four or five days ahead of time.

Q. Is the assured or prospective assured a customer or client of the commission agent or of the branch office or of the company in which the insurance is carried or proposed to be carried?

A. In some instances a foreign contractor will have his company preference. The surety business is very much like the banking business. Contractors do not like to dis- [fol. 414] turb their guaranty of credit because it is his bond to place and his money that pays the premium. As a general thing, we are agreeable, if he will be good enough to designate us the broker of record, to place it in whatever company he has chosen, that is, if it is a company that we can give business to.

Q. What is the general rule with reference to the holder of any type of casualty or surety contract as to whether or not the assured is a client of the company or of the commission agent who writes the business?

A. I would say, particularly in the isolated one risk assured, that nine out of ten of them do not know what company holds the cover, but the surety business is worked so definitely, not only by the commission men but by the men on salary, in developing the larger premium that I don't want to make a definite statement, but as a general thing it would be my opinion that the contractor would be the client of the company. Sometimes that can be met by argument and some contractors do business with three or four companies, but only recently I secured an application for a contract bond in one company and got a letter from the contractor the next week withdrawing it from that company and sending it to another company because the salaried man of the company had contacted him outside of the state and requested that the business go to his company and he was successful in selling it, although the application had already been given to me.

Q. What becomes of the business in a case of that kind, so far as the commission agent is concerned? Does that go to another commission agent?

[fol. 415] A. The company man didn't leave me entirely out of the picture. He didn't solicit the business for any other agent; he merely solicited it for his company. We get less commission from that company but we had to be satisfied with half a loaf in that case, which is a whole lot better than none at all.

Q. Did the company representative who solicited that man get any of the commissions?

A. Oh, no, sir. It just so happened that we did not have what is known as a top commission contract with the company whose salaried employee was more active than our salaried employee.

Q. Generally speaking, does the company, or the branch office manager, recognize the ownership of the commission agent in the business that he writes for the company through the branch office?

A. Invariably all of the companies that we represent subscribe to the American Agency System which definitely establishes the ownership of expirations. There is only one thing there. In contract bonds there are not any expirations. Each and every one stands on its own bottom and presents its own underwriting and commission peculiarities.

Q. What other types of indemnity contracts or insurance contracts do you personally come in contact with?

A. We endeavor to sell all lines of casualty. So far as indemnity is concerned, we have endeavored to develop a fidelity bond business and I suppose we have as fair a volume of court business as any one in the city.

Q. Do you have any automobile liability business?

A. Yes, sir.

[fol. 416] Q. I wish you would state what has been the custom in Virginia during the time that you have been engaged in the insurance business in this state with reference to the division of fire insurance commissions between Virginia commission agents and non-resident agents or brokers in relation to contracts negotiated entirely outside of the state?

Mr. Christian: The question and answer are objected to as being immaterial for the reason that the fire insurance business is an entirely different business from the casualty and surety business and no issues involved in it are involved in this case.

A. I took my first fire contract, I believe, on the first day of April, 1932, and the companies that presented themselves for agency held out as a plum the fact that they had various countersignature fees in the state that would be forthcoming in the event that I represented them but apparently the fire companies pass on to the local agents in various communities all risks that cover in the territories represented by those agents for countersignature and subsequent deduction from the account current. The fire companies, so far as I know, have no contracts in writing or I have no written contract with any fire company. They say, "Do you want to represent me?"

"Yes."

"Well, here are the supplies," and they send you a certificate of authority, but there isn't anything in black and white.

[fol. 417] By Mr. Staples:

Q. What has been the practice with reference to the division of commissions on a policy that is negotiated by a non-resident agent or broker outside of the state?

Mr. Christian: Is it understood that I am objecting to all questions about fire insurance?

Mr. Staples: Yes.

A. On fire countersignatures that we have obtained, sent us by the company, we invariably ask them for the name of the broker and check to see if he has a non-resident card and, if he has not, we set up in our account the entire commission. If he does have we surrender half of it to him, and the reverse is true on any risk that we may have which is outside of Virginia. So far as I know, this has been done since 1932.

Q. Do you know how long the custom has prevailed of associating the resident commission agent with fire insurance policies negotiated outside of the state where the coverage is in Virginia or in the territory of the particular commission agent?

A. I do not know how long it has prevailed but I am inclined to think it has been for many, many years.

Q. Has it prevailed as long as you have been engaged in the insurance business in Virginia, or not?

A. I am not prepared to say, Mr. Staples, because I didn't know anything about fire insurance until 1932.

Q. When was the first time that you were required to ascertain whether or not the non-resident agent or broker was licensed in Virginia before you were authorized to divide the commissions with him?

[fol. 418] A. As I recall, we were given the names of the brokers in 1932. I won't be sure of that.

Q. Then am I correct in my understanding, from what you have testified to, that ever since you have been engaged in the fire insurance business the Virginia resident commission agent has received half of the commissions accruing from all fire insurance policies negotiated exclusively outside of Virginia where the risk covered is within his particular territory in Virginia?

A. That is correct.

Cross-examination.

By Mr. Christian:

Q. Do you get general agents' commissions under the National Surety contract?

A. Yes, sir.

Q. How about the New Amsterdam?

A. We are general agents of that company also.

Q. How about the Fidelity and Deposit?

A. No, sir, just producers.

Q. How about American Employers?

A. The same.

Q. Do you have any sub-agents that work under you for the National Surety or the New Amsterdam?

A. Yes, we do.

Q. How many?

A. Under contract I don't know. We do a brokerage [fol. 419] business all over the state. Some of them are National Surety agents and some are not. I believe there are only two definite holders of National Surety contracts that clear their business through us here in the city—Davenport and Claiborne, Goodridge & Goddin.

Q. What is your territory for the National Surety Corporation?

A. I believe the contract reads "Richmond and vicinity" but it covers a multitude of sins.

Q. And you really are allowed to go all over the state and get business in other agents' territories?

A. And vice versa.

Q. When you go out to Wise County, Virginia, or up in Roanoke and get a bond for a county or city officer, do you have to give the Roanoke agent of the National Surety any part of the commission?

A. I have to do it to get the business, yes.

Q. You mean because he has an influence on the business too?

A. Of course he has.

Q. How do you usually divide with them? Do you take the overriding and they take the producer's commission?

A. Yes.

Q. And if you can get it without doing that, then it is just a case of more power to you, isn't it?

A. And economically more correct from my standpoint. In almost every instance, in business of that kind, the local agent shares in the commission up to his contract.

[fol. 420] Q. In other words, he has enough influence on the local people to keep you from being able to take that commission out of that county or city without giving him part of it?

A. That is right.

Q. You concern yourself, personally, principally with the surety business, don't you?

A. Yes, but we write about $50,000 a year in other lines.

Q. In casualty lines?

A. Casualty lines.

Q. One of these witnesses didn't want to say how much he wrote a year. Do you object to saying how much you write in surety premiums?

A. About $120,000.

Q. Do you have anybody working for you called a solicitor?

A. No, sir. We did have some solicitors but they cost us too much money.

Q. When Davenport and the other local agents that you mentioned, Claiborne & Goddin, send you business, they are just brokering that business with you, are they, and you get the overriding commission and they get the producer's commissions?

A. I think that Davenport has a regional contract with the company. That arrangement and that friendship down

there has been of very long standing which brought about that particular situation. It is rather unusual.

Q. I received the impression from your answer to a question on examination in chief that a branch manager, such as Mr. Osborn, or Mr. Adair or Mr. MacNeil, had imposed on [fol. 421] him by his company the obligation to see that premiums are collected. Is that generally true of branch managers or aren't they simply underwriters and acquisition instrumentalities just like commission agents in a great many cases?

A. Under a branch office set-up there is usually an underwriting department and a cashier's department and a claim department and an inspection department, and so forth, and the branch manager is the head of all of them or the overseer. Therefore the cashier's department is as much a part and parcel of his job as the production.

Q. But that cashier reports to the financial officer at the home office of the company rather than to the branch manager, doesn't he?

A. Some companies, I imagine, would have different situations in that respect than others.

Q. You don't mean then to leave the impression definitely that a man like these three plaintiffs I mentioned has responsibilities for collections?

A. He has no permanent responsibility. They don't have to put up the money in the event if is not collected, I don't think, but I imagine they have the responsibility of seeing that their cashier's department functions.

Q. At least that was so of you, was it, when you were a branch manager?

A. Yes.

Q. It has been suggested that you are talking about collections from the agents and not from assureds. Which are you talking about?

[fol. 422] A. I am talking about collections from agents.

Q. I was under the impression you were talking about the branch manager being responsible for making collections from assureds.

A. No.

Q. You didn't mean that?

A. I didn't mean that.

Q. Isn't it a fact that a good many general agents report directly to the home office even in towns where the company has a branch office? I am speaking now about people getting

general agents' commissions instead of producer's commissions.

A. That is true in some instances. I believe it is true here in Richmond. I know it was true of the National Surety in Los Angeles. They had a branch office in the city and they had a general agency that reported direct. The general agency had the territory. But those are just situations that time has developed.

Q. Having reference to the thirty-four companies that are plaintiffs in this suit, much less than half of them have branch offices in Virginia, don't they?

A. I don't know how many branch offices there are in Virginia but it seems to me it wouldn't be half of thirty-four.

Q. It would not be half of thirty-four?

A. No. It is only ten or twelve, isn't it?

Q. What bearing has this service got on a man in the casualty and surety business being allowed to write the renewal contract when the existing contract expires, if you [fol. 423] don't service a risk like that? Does it affect your capacity to write the renewal contract?

A. You would, I believe, stand a very good chance of losing it if you just merely let it go to the dogs or roll in the doldrums. That would be expected.

Q. Is the obligation to service a contract considered to have such a value that if you were going out of the insurance business you would feel justified in paying some other agent to service your contracts that you had on your books?

A. You mean if I were to retire from the business?

Q. Yes, would you feel that you had to go around and dig up a competent man to service your contracts and pay him something for agreeing to do it?

Q. Generally in the retirement of an agency, if that agency is retiring voluntarily or through death and not through failure or inadequacy of finances, the business would be worth something. The expirations could be sold to some other agency.

Q. Suppose you sold the expirations to some other agency and did not sell the servicing to that agency?

A. I think that you would find almost every sales agreement of any agency being bought or sold would have the servicing of the existing business a part of the agreement.

Q. Is it customary to give a man your expiration records and some money when you transfer a business to him under those circumstances or is it customary to give him the serv-

ice obligation and the expirations and for him to give the seller some money?

A. Your last statement is, I think, more or less true, that [fol. 424] if you have anything to sell you receive the money.

Q. In other words, he gives the old agent money and also assumes the service obligation?

A. That is right. That is all figured in as a general thing. There are a hundred different deals that can be made.

Q. Usually it is that way rather than having to pay somebody to take over the expirations and the servicing?

A. I would say so.

Mr. Christian: I don't waive my objections to the materiality of questions about the fire business, but in advance of a ruling by the Court on its materiality, I will ask some questions without waiving my objections. I still contend everything about the fire business that is in this record is utterly immaterial.

Q. Are you acquainted with the regulations and agreements among themselves of the members of the local fire boards around Virginia?

A. Well, our agency is a member of the local fire board here.

Q. You don't know why that custom exists then about the ten percent that you said you were informed of in 1932 when that company asked you to be its agent?

A. No, I don't know why. I have a very good idea.

Q. What is your idea on the subject?

A. I imagine it is an established custom.

Q. You imagine it is established by these local board rules and regulations too, don't you?

[fol. 425] A. No, because at the time that I took on fire companies I did not belong to the local board. I went in the insurance business as an agent and I don't think we joined the board until Curtis came with the agency in 1935, so there was no obligation of any company we represented to pay us any overriding commission or any countersignature commission on account of board membership because we weren't members of the local board.

Q. Did you represent a non-board company?

A. No.

Q. What companies did you represent?

A. The first fire companies that we took into the office

were the National Union, Duquesne Department and the Safeguard.

Q. Do you know whether those companies are members of the Southeastern Conference or were they members of the Southeastern Conference?

A. They were.

Q. Do you have some rather large lines of surety business that you place for Virginia corporations and which cover employees outside of Virginia?

A. Yes, sir.

Q. Do you find that you are able to give those obligees or assureds adequate service?

A. Yes, we think so and they seem to be satisfied. Most of the business is fidelity business and the investigation is taken care of. In the event of claims the companies' claim offices, scattered in other states, will handle those claims under our guidance.

[fol. 426] Q. Is there any immorality on the part of the National Surety Company or on the part of these assureds to whom I have reference in placing all of that business with you instead of scattering it around through Illinois, Michigan, Louisiana, and various other places that it covers?

A. No, sir, I don't think so.

Q. Are you aware that any interests of those obligees or assureds suffer by virtue of placing that business with Boswell & Curtis instead of scattering it around over the states?

A. Quite the contrary. That business, a great deal of it, would be unprofitable if divided. It would have to be written as a large single premium rather than scattered with many companies. The loss ratio in Louisiana might be 2000 percent, whereas in North Carolina it might be nothing. You have to look at the picture from the income and outgo.

Q. The company then would suffer a good deal if it had to break that up into numerous contracts in those different localities and would have a separate premium computation for each contract?

A. I believe that the premium computation for each locality is established and, if not, it is easily available. I was looking at it from an underwriting standpoint, having it combined in one company rather than having it in a number of different companies.

Q. Do you think that the business with you is transacted with greater or less facility than if it were transacted with various agents all over that territory?

A. I do not think that the business suffers by being placed in one agency.

[fol. 427] Q. You, however, would be hurt and these various local agents would be helped or, at least, there would be a tendency to help them if it were not placed in one agency; is not that correct?

A. We would be hurt naturally, yes.

Q. And these various local agencies would be helped or, at least, there would be a tendency to help the local agencies, wouldn't there, if it were taken away from you?

A. That is true, but if the reverse were true on other national schedules it would tend to temper the wind.

Q. You have testified today as to the commission agent acting as a buffer between the company and the assured and maintaining a sufficient force to service a contract he has written and visiting the customers in attempting to improve their loss ratios, pointing out unusual hazards, confering with them as to the reasons why they don't follow the recommendations of the company's engineer which they have not followed, seeing that they get the full benefit of the engineering service provided by the company, and so forth. Have you been speaking about business which you were the producer of only or of other business?

A. Business that I was the producer of only.

Q. Where you speak about the obligations that you feel rest on yourself, is that because of your capacity as a producing agent?

A. Primarily.

Q. You would feel that the same obligation rested on you or, at least, to a considerable extent, you would feel that it did, I suppose, if the business had been brokered with you and you had gotten a general agent's overriding commission [fol. 428] on top of the commission that was paid to Davenport or to Claiborne & Goddin, wouldn't you?

A. Yes, sir.

Redirect examination.

Q. Mr. Christian has asked you about the obligation that you would feel with reference to contracts that you were associated with which originated in Virginia. I will ask you this question with reference to contracts which originate

through negotiations conducted exclusively outside of Virginia and will ask you whether or not in that connection you have seen or are familiar with a resolution, a copy of which has been introduced in evidence, as Defendants' Exhibit A, part of a bulletin issued by the Virginia Association of Insurance Agents, a copy of which I hand you?

A. Yes, sir, I am familiar with that.

Q. I will ask you whether or not you would feel, in connection with a contract of that kind, such as is referred to in that resolution, that you, as a commission agent of Virginia, the same obligations with respect to same as is expressed in that resolution?

A. We would feel under the resolution that on account of the fact that we were associated we had a very definite obligation.

Q. Do you think that the resolution correctly sets forth and expresses the obligation which you would feel toward the insurance carrier and the assured, as well as the broker who negotiates the contract with reference to such a contract as is negotiated exclusively outside of Virginia but covers a risk inside of Virginia?

[fol. 429] A. Yes, because with this resolution at hand our association has gone on record as to just what our duty is, where it lies and how it shall be carried out.

Q. Will you state whether or not it is your intention in the future to perform that duty as expressed in that resolution with respect to any such contract as you or your agency may be associated with?

A. Yes.

Q. Mr. Boswell, when you spoke of your office handling business which was brokered throughout the state, what did you mean by "brokered"—placed with you by agents of other companies or by persons who hold brokers licenses in Virginia?

A. We have no business placed with us by persons who hold brokers' licenses. We do have a considerable amount of either brokered or what might be called sub-agency business that gets into our office on account of our ability to handle those particular lines. This business comes from agents of other companies and agents of the companies that we represent.

Q. How many casualty and surety companies are there that you know of which have adopted the branch office system in Virginia?

A. Do you wish me to name them, to the best of my knowledge?

Q. Yes.

A. Travelers, Fidelity & Deposit, American Bonding, Fidelity & Casualty, The Aetna, the Glens Falls, National [fol. 430] Surety, New Amsterdam, Century (the Century hasn't a branch office as such but does have a man here), the Commercial Casualty, together with the Metropolitan, and I believe that is all of them or practically all of them.

Q. Do you know how many of those companies are in this suit?

A. I know that the National Surety and Fidelity & Deposit are not. I am not sure about the others.

Q. What system is used by the companies which do not have branch offices for supervising the work of their commission agents in the state?

A. They have some supervising office located away from the state, like, for instances, the Massachusetts Bonding supervises this territory through a branch office in Washington. The other companies, such as Maryland Casualty Company, have agents who report direct to the home office of the company.

Q. Is that what is known as the general agency system or what do you call that?

A. The general agency system is a type of misnomer in the casualty and surety business, due to the fact that the involvement of territory and the subsequent obligations make it unprofitable for a thoroughgoing general agency to operate on a small differential. General agents, as defined and as limited by the acquisition cost conference, are usually commission contracts that are given out for the volume of business rather than territorial supervision.

[fol. 431] Q. What type of company employee supervises the agents where there is no branch office?

A. As a general thing, the companies have contact men located at convenient points who periodically make trips, such as the Massachusetts Bonding, and the Hartford has a branch office in Baltimore.

Q. Do they have special agents in Virginia?

A. I think the Massachusetts Bonding has a resident special agent. I am not sure whether the Hartford has one or not.

Q. I mean what is the general custom where they do not have a branch office? Do they have special agents?

A. They usually have some contact with a salaried man who is there to plant the territory and look out for their interests for them. Those people, as a general rule, do not maintain offices. I think the special agent for the Massachusetts Bonding lives in Lexington.

Q. Do these men perform something like the same functions as the branch manager would perform, so far as the production end of the business is concerned?

A. That is it.

Mr. Christian: Again I say that I don't think the resolution passed by this voluntary association has any materiality to our case and will insist at the hearing that the resolution and everything about it should go out as immaterial, but in advance of any ruling in the matter I will ask a few questions in respect of the matters pertaining to [fol. 432] the resolution about which the witness has been asked by Mr. Staples to testify.

Recross-examination.

By Mr. Christian:

Q. Without waiving the objection, I ask you will it affect the feeling of obligation which you said you would feel as a Virginia countersigner of a contract, as mentioned in this resolution, covering in Virginia but produced exclusively outside of Virginia if no single one of the broker or the company or the assured wants you to concern yourself with doing these things which the resolution obligates you to do or wants you to do any of those things?

A. I will answer that question in this fashion: We belong to the Virginia Association of Insurance Agents and as long as they have a set of rules and we are counted among their membership, we want to do what we can to live up to those rules and if such a case presented itself where the broker and the assured and the company advised us to go in contravention to the rules of our Association, we would have to appeal to the Association for a ruling in that particular instance.

Q. Isn't it a fact that if the broker wants you to do all of this in connection with the risk, or the assured wants you to do it, they can get you to do it without the help of this law?

[fol. 433] A. This is a distinct clarification of our duty. It not only tells us, as countersigners, as to what we should

do but it also surrounds the broker with every bit of protection offered by the American agency system.

Q. It also obligates all the members of the Agents' Association to communicate with the customer of this non-resident producer, does it not?

A. Yes.

Q. And negotiate with that man in order to gain knowledge of all the pertinent facts relating to the contract?

A. It does.

Q. Isn't that a decided departure from what has hitherto been considered to be the ethics of the business between agents?

A. In a way it is.

Q. Couldn't you remove that qualification "in a way" and just say that it is flatly in violation of all previous declarations of ethics by agents for you to be instructed by this local Virginia association to put yourself in contact with an assured who is somebody else's customer and not yours, and scrutinize his insurance transactions without the knowledge or assent of that broker or agent who represents him from away from here?

A. My remark was qualified, as almost all worthwhile brokerage is, as a general thing, a meeting of the minds of the countersigning or resident agent and the out-of-state agent. I would say in nine cases out of ten there would be some connection between the two. There always has been in the business of my office.

[fol. 434] Q. You have never had any business in your office involving casualty and surety lines where you countersigned contracts produced by non-resident brokers and agents, have you? It has been limited to fire?

A. No, not altogether. The countersigning that we have done has been a type of joint solicitation, you might say.

Q. This countersigning will be willy-nilly and compulsory as far as the non-resident producer is concerned, will it not, and will not be a type of joint negotiation or representation?

A. I don't know what you mean by willy-nilly.

Q. I mean this is imposed on this non-resident producer whether he likes it or not by this resolution, isn't it?

A. Under this resolution he should carry out what the resolution says do.

Q. Is there anything in the resolution to indicate that if the non-resident broker or agent who truly produced the

business does not want you to do this that you will be excused from doing it, or won't you be in noncompliance with this resolution, even though the non-resident producer told you not to do this, if you failed to do it?

A. Yes, you would be in violation of the resolution if you didn't live up to it the best way you could.

Q. Then going back to my question, when you, pursuant to this resolution, and without the non-resident producer giving you permission to do it, contact the assured or his Virginia representative and familiarize yourself with all pertinent facts relating to the contract, aren't you violating [fol. 435] what has been hitherto understood to be the ethics of your business?

A. Not having had any large lines of that particular types, I can't answer that.

Q. You haven't had any transactions of countersigning involving casualty and surety contracts, you mean, don't you?

A. I haven't made any that I didn't associate myself with the picture with the exception of one or two bid bonds or some court case or something like that that we were requested to sign for some out-of-state man.

Q. If I am a Virginia representative of one of these assureds which has placed its casualty and surety lines in New York through a New York agent or broker, and you come to call on me and want to know what about all of this Virginia coverage. Is there any justification you can think of for intruding yourself into my business except that you are a member of a Virginia agents' association which has compelled you to do it? Can you point to any other good reason for your doing it—prying into my business with which I have invited you to have nothing to do?

A. You haven't invited me to have nothing to do with it until I get down there.

Q. No, I have not invited you to have anything to do with it.

A. Then it is up to me to sell you on the fact that the company you are doing business with is extending its service. Certainly there could be nothing that would detract (I am going to be conceited enough to put this in the record) from the service of a local firm.

[fol. 436] Q. There certainly would be if I didn't happen to have records here covering my loss experience or I didn't

have anybody here that was duly authorized to talk insurance with you?

A. If you had no one here to do that, there isn't anyone I can contact.

Q. So your justification would be then, if you were arguing the thing with me, that "at least I am not going to do you any harm or I don't think I am."

A. Well, let us leave it on the first premise and say at least I am not going to do you any harm.

Q. Suppose I say, "Has my agent in New York any knowledge that you are doing this or are you doing this by his request or at his suggestion?" And you are compelled to tell me, in answer to that, that he has no knowledge of it, that he doesn't know you and you don't know him, you don't know what opinion he possesses of you, good or bad. Would that shame you at all in coming to me?

A. I would do this: In the event of a countersignature I would acquaint the broker who sent the business, either direct or through the company, with the fact that under a resolution I was supposed to do certain things and I would send him a copy of that resolution and I would point out to him particularly Clause No. 2 which associated me with him and with the fact that I would protect that renewal on his books so far as we were concerned.

Q. Is it not often true, as testified heretofore in this case, that the general agent through whom these cont-acts [fol. 437] in question are written oftentimes will not disclose, even to the insurance carrier, who is the broker that has produced it because of the broker considering that his trade secret that his general agent is obligated to protect him in, and that the insured is his customer?

A. You mean by that that the carrier will not tell the countersigning agent who the broker of record is in New York or Chicago or Philadelphia?

Q. I mean isn't it true that the carrier often does not know who is the producer through whom the business came to its general agent and that the general agent won't tell the carrier who is its producer? Aren't you aware that is often so?

A. I don't agree with that.

Q. You think that every general agent will freely disclose its brokerage and other production sources to its company?

A. You are confusing production custom. I don't believe

that the general agents as such will do a great deal of brokerage business. That will be done by brokers direct with branch and services offices of the companies in the larger centers. It will not come through a general agent as such.

Q. You know it to be a fact that the brokers in New York frequently deal with what are called the Borough agents, don't you, instead of going to branch offices?

A. No, I don't know that. You make that statement. I won't disagree with you.

Q. You don't know whether it is so or not?

A. I won't disagree with the statement.

[fol. 438] Q. Is it true or false that these companies who do not have branch offices in Virginia have them in cities outside of Virginia which are larger than any Virginia city in a number of cases?

A. I think that it is true that some of the companies have branch offices in a removed city.

Q. In other words, there is no cleavage between the companies on a basis of only ten or twelve believing in the branch office system and the balance not believing in it but the cleavage is simply as to in how small a town you may economically, under all conditions, maintain a branch office?

A. I don't think that the size of the town has as much to do with it as production in the territory and the company is pushing itself forward in that particular locality.

Q. Except for that correction would my statement be true, that nearly all the companies have some branch offices in the United States somewhere?

A. They either have some branch offices or they have departments. For instance, the Firemen's Fund Indemnity.

Re-direct examination.

By Mr. Staples:

Q. Mr. Boswell, isn't it true that the number of special agents and the amount of that type of service provided by a casualty or surety company would be largely controlled by the volume of business done in Virginia by that particular company?

A. That is true. The more premium income a company has the more necessary it is generally for them to have [fol. 439] more managers or assistant managers or specials

to service it. On the other hand, in some instances a company may organize a state with a larger force than their volume would indicate to get started, particularly in the case of some new company.

Q. A company that just did a sporadic business in Virginia naturally wouldn't have the same service organization or same number of special agents protecting the interests of the company as another company which did a large volume of business in the state; isn't that true?

A. They should not.

Q. You spoke of the records that it was customary for a Virginia resident agent to make of contracts that come to him which are negotiated outside of the state. Are these records sufficiently comprehensive to provide information to the taxing authorities of the state in order to ascertain the proper amount of tax which should be imposed upon a company with reference to this Virginia coverage business originating in another state? In answering this question please do not answer yes or no, but state the records which it is customary to keep in the office of the resident Virginia agent which you think would have any bearing upon the question above asked and which would provide the information which you think the taxing authorities would require.

A. On contracts of fire insurance it is an invariable custom to keep a copy of the daily report in our account current file and to make the account current show the total premium, number of the policy and the commission permitted to us. We also make a card expiration of the policy [fol. 440] and enter the amount of commission in our accounts receivable column on our books.

Q. Are those records which are kept in your office in such condition that the taxing officials of the state, from an examination of same, may ascertain the total amount of premiums charged on business covering in Virginia but originating outside of the state, as well as the business which originates within the state? In other words, is there any distinction made in your records with reference to the source or origin of the production of the contract?

A. This information would be available, although it has not been kept separate, but our card record would show from whom the business originates.

Q. Do the records in your office reflect the total premiums

charged on policies written in your office or countersigned therein?

A. The daily reports will always show the total premium charged, which may be amended by endorsement and those endorsements would also be a part of that daily report.

Q. I will ask you whether, in your opinion, the ethical standards which would apply to a transaction where a broker voluntarily associates you with him in a Virginia coverage contract which he negotiates outside of the state would have any bearing or any substantial similarity to a case in which the law itself compels the association of the Virginia resident agent with a non-resident broker and where the association of a Virginia resident agent with the transaction is not voluntary but is involuntary and, as [fol. 441] has been developed from the evidence in this case, is sent against the wishes of the broker and not in accordance with his desires but pursuant to the provisions of the statute involved in this case?

A. In my opinion the resolutions of the state association would now impose upon me certain requirements that, so far as the so-called ethics of the business were concerned, were not as clearly defined and possibly not existent prior to that time.

Q. Do you think that the present conditions under the new 1938 Act are different from the conditions under which this so-called ethical custom arose or do you think they are the same?

A. With the supporting resolution they are essentially different.

Q. What do you conceive to be the status of the Virginia resident agent so far as ownership or part ownership of the business is concerned with reference to contracts which are referred to him pursuant to the mandatory requirements of the 1938 statute?

A. If the Act as construed associates the Virginia agent as definitely as it would seem, it is still not exactly clear in my mind as to the ownership of the expiration or if the Act vests the agent with such ownership it would, of course, be agreeable to the receiving agent to accept it.

Q. To what extent would you think that the ownership of the local agent, as distinguished from association with the non-resident broker, would apply or be effective?

[fol. 442] A. Having so little brokerage business, I could hardly reply to that until some actual case presented itself.

If the law succeeds in giving me a portion of any business that I get by right of representation of a certain company, it would certainly be my desire to see that the business remains with my agency and with my company.

Q. To what extent would you consider that the non-resident agent or broker would have an interest in the renewal of the business?

A. He would have the same right as I would and possibly more so as he would be closer to the source.

Q. Is it your idea then that there would be a joint ownership in the non-resident broker and the Virginia resident agent of this business, each to try to protect the interests of the other in the renewal?

A. Under the resolution of the State Association the agents of that Association are pledged to respect the ownership of the expirations and to render assistance to secure the renewal for the non-resident broker when requested.

Q. Do you understand that assistance is to be rendered regardless of whether the Virginia agent is to be continued in association or not?

A. If the Virginia agent were not to be associated on the renewal his assistance would not be required.

By Mr. Staples:

Q. You think then that that second clause of the resolu-[fol. 443] tion is predicated upon the assumption that the local agent would be continued to be associated with the broker, do you not?

A. I do.

Q. Answer the question whether or not your answers with reference to ethics between Virginia resident agents and the brokers were confined to fire insurance or whether they were intended to embrace casualty and surety contracts as well?

A. It is my belief that ethics are not confined to a line but confined to the business generally, regardless of what class of business is concerned.

Re-recross-examination.

By Mr. Christian:

Q. Will you state what are the annual premiums through Boswell & Curtis in fire lines?

A. I can approximate it.

Q. That is all I want.

A. I would say it is somewhere between nine and twelve thousand dollars—less than twelve thousand dollars, I know.

Q. Do you consider yourself an expert in fire insurance agency business, as well as in the casualty and surety, or in the latter only?

A. What do you mean by "expert"?

Q. I mean that you have expert knowledge as to the performance of the duties of an agent and the customs in the business?

A. Certainly, on account of experience, I am more qualified to answer about casualty and surety.

[fol. 444] Q. Do you have knowledge of whether it is the usual custom for the agents of casualty and surety companies to have written agency agreements with their companies?

A. Yes, sir.

Q. Which is the custom? Is it a custom to have written agency agreements or not to have them?

A. We have written agency agreements with all the companies we represent, the casualty and surety companies.

Q. Is that generally true, according to your experience, with other agents?

A. So far as I know.

Q. Has any state authority ever examined your records with the view of ascertaining the correctness of premium tax returns by either of your casualty or surety companies?

A. Not that I know of.

Q. Have you ever made any report to the tax authorities of the State of Virginia as an aid to them in assessing premium taxes against your companies?

A. Only as a matter of my own income tax in the partnership returns. That has nothing to do with a premium tax.

By Mr. Staples:

Q. Up to very recently there has never been any statute which, if complied with, would require or even indicate that the combined records of all the resident agents of Virginia would, in any way, reflect the true amount of premiums paid on business originating outside of Virginia, has there?

A. So far as I know, there was no requirement that the [fol. 445] holder of an agency license keep any record of his writings except with his company.

Q. Even if he did keep complete records of all the business coming through his office, the point I was trying to bring out is this, that business handled through non-resident agents and brokers, with which no resident Virginia commission agent was associated, would not appear on the books of any Virginia resident commission agent; is that correct?

A. Naturally, if the countersignature were not occasioned by a resident commission agent there would be no commission agent who would know anything about it.

Q. I believe you said you had been a branch manager of a casualty and surety company in Virginia during your past experience; is that true?

A. Yes, sir, I have.

Q. Did your office keep a record of the amount of premiums charged in policies that were countersigned by your office, originating outside of the state?

A. When I was branch manager of a surety company it became necessary, from time to time, to countersign bonds and policies and, so far as I can remember, no record was kept.

Q. Are you familiar with the general practice of branch offices in connection with keeping records of this type?

A. Methods of bookkeeping change from time to time. I suppose I am generally familiar but I am not familiar enough to give testimony in that particular direction.

[fol. 446] By Mr. Christian:

Q. Without waiving my objections, I will ask the witness whether, when he referred to furnishing countersignatures without keeping a record of the business countersigned, he had reference to business produced in his own territory or to business produced outside of his own territory?

A. My territory at that time was the State of Virginia and the business was evidently produced outside.

Q. Did you keep records of business produced in Virginia?

A. All of it by the agents reporting to my office.

Roger E. Clark, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Clark, give your full name, age, residence and occupation, please?

A. Roger Evans Clark, Fredericksburg, Virginia; 40; I am in the general insurance business.

Q. How long have you been engaged in the insurance business, Mr. Clark?

A. Since 1927.

Q. With what types of insurance have you been connected?

A. All lines from life through fire, allied lines, and casualty.

Q. Have you been a commission agent or a salaried employee, or both? State your experience along these different lines?

A. I have been a commission agent while I have been in business.

[fol. 447] Q. You never have been a salaried employee of any insurance or casualty company?

A. Of no company, no. I was a salaried employee of a local agency for a few months but not a company.

Q. What companies do you now represent in your office?

A. The Aetna Fire, the Agricultural Insurance Company of Watertown, New York, a fire company, the Reliance Insurance Company of Philadelphia—all of these are fire companies until I indicate otherwise—the Home Insurance Company of New York, the National Liberty Insurance Company, the Sun Insurance Office of London, the Northern Assurance Company of London, Fidelity-Phoenix Fire Insurance Company of New York, and I don't know that I can quote them all offhand. The casualty company is the Century Indemnity Company of Hartford, Connecticut, and the Northwestern Mutual Life Insurance Company of Milwaukee.

Q. Is the casualty company you represent one of the plaintiffs in this suit?

A. Yes, sir.

Q. What has been the territory which has been covered by your office during this time?

A. Fredericksburg and vicinity and Virginia and, I will say, in the counties within forty miles.

Q. Are you a member of the Virginia Association of Insurance Agents, Inc.?

A. Yes, sir.

Q. Do you hold or have you ever in the past held any [fol. 448] office with that Association?

A. Yes, sir.

Q. Just state the situation with respect to that?

A. I have been a member of committees, Chairman of the various standing committees up until the year I was made President, and since then have served on the Executive Board, now known as the Board of Directors, which position I now occupy.

Q. When were you President of the Association?

A. The year 1936-1937. Our fiscal year doesn't end in January. It was a one year term.

Q. Has your past experience in this business and your service as an official, director and president of the Association, brought you into contact so that you would have reasonable familiarity with the general customs and practices of the business of a commission insurance agent?

A. Yes, sir.

Q. I wish you would state what has been the custom with reference to the division of commissions or rather the compensation of the Virginia resident commission agent with respect to fire insurance business during your experience as an insurance agent?

Mr. Staples: Counsel for the defendants agrees that it is understood and will be understood, throughout the taking of these depositions, that counsel for the plaintiffs object to all questions relating to the fire insurance company business and all customs incident thereto without the necessity for his repeating the objection.

[fol. 449] A. Commissions on fire business have been divided between the resident agent and the broker equally, in my experience.

Q. Do you have reference to business originating or negotiated entirely outside of the State of Virginia where the coverage has been within your territorial representation of any particular company writing the risk?

A. Yes.

Q. Has that practice of dividing the commissions in fire insurance risks negotiated by non-resident brokers outside of Virginia prevailed ever since you have been connected with the fire insurance business?

A. Yes, sir.

Q. Is there any local board of insurance agents in Fredericksburg and vicinity?

A. Yes, sir.

Q. How long has that board been there?

A. About four months.

Q. Was there any local board there prior to that time?

A. Not in my experience.

Q. Do you have any knowledge of the origin of the custom of division of commissions in the manner you have stated between non-resident brokers and Virginia resident agents in the fire insurance business?

A. No, sir, it was in effect when I went into the business.

Q. I wish you would state what is customary for a Virginia resident agent to do when a fire insurance contract, negotiated outside of the state, is sent to him by a non-resident broker or by the company that he represents which is writing the risk?

[fol. 450] A. When sent by a company he is given instructions as to things he will do and he conducts his investigation of this risk in the same manner as he would if he were the direct producing agent, and reports, after his examination of the risk, as to its desirability to the company and such things that he would recommend to the advantage of the customer or property owner. He then prepares the policy, submits the form through the constituted rating bureau having to do with the control of the rates and the form applied and transmits the completed document to the company. He then takes credit for his commission which is referred to in the transmittal letter in his company account current and holds himself in readiness to service that risk until the policy terminates.

Q. What is the relationship between the commission agent, the assured and the company with reference to the policies, either originating in Virginia or sent to the agent in the manner you have indicated?

A. The assured is given to understand that the agent is associated with the producing agent to render the type of service that the risk deserves and that insofar as the resident agent is concerned it does not in any way reduce his responsibility to the owner, nor does it increase the cost of the insurance to the owner of the property.

Q. What is his attitude to the company? What obligation does he feel he owes to the company?

A. To notify the company of a risk which, considering the hazard assumed, is undesirable and, in case cooperation is [fol. 451] not obtained, to make the risk desirable. He has

a divided interest between the company obligation and that which he owes to the property owner.

Q. Does he occupy a partial or an impartial relationship between the insured and the insurer?

A. His position is, if it can be when he has two interests, neutral. He has both interests at heart, the company and the client.

Q. What experience have you had with reference to the casualty and surety business? That is, when did your experience in that begin and what has been the extent of it?

A. We have casualty business in the office that has been there ever since I have been in the business. Its rapid growth has now placed it as the largest type of insurance in the office.

Q. Please state the classes of risks which are written by the casualty or surety company that you represent?

A. Compensation, automobile liability, personal accident and health, public liability, contractor's liability, plate glass, surety bonds, and it goes on down the list, Mr. Staples.

Q. What is the type of service which a resident Virginia agent renders in connection with a casualty or surety contract, beginning from the time of the negotiations between the agent and the assured? You may use any particular type of contract that you desire for illustration.

A. Take a compensation risk, a mandatory coverage. We have to secure a very detailed knowledge of the operations [fol. 452] to be covered. In preparing a contract we work with the assured as to the estimated amount of payrolls on which this type of insurance rate is promulgated. This gives the company some idea as to the premium income on the annual basis for the risk being assumed. With this knowledge they can treat certain hazards more intelligently as to whether they are acceptable to the company. In this preliminary survey of the risk we will find hazards that could be corrected and the resident agent, having the cooperation of the assured and knowledge of his operations, will endeavor to have him cooperate to put into effect the preventive measures, measures which, from his experience as an insurance man, will bring down the loss frequency and correspondingly reflect in the premium the assured will pay for his policy. He uses to the fullest extent the facilities of the engineering department of the company in this connection. The policies are properly put through and placed into effect, the resident agent, of course, being re-

sponsible for the collection of the premium. It is his duty then and he does service that risk until it terminates. When the loss frequency increases he continues to render the safety service and brings the risk in line. Accidents occur and it is that agent's duty to see that the proper forms are properly completed and complete, firsthand information is submitted to support the claim, and he follows it through to its final payment, at all times having at interest the two parties to whom he is responsible, the company and his client. The automobile risk can vary with the treatment you [fol. 453] give a single car to a large fleet. The single car owner you may think would not require much service. If he does need it you are the one person to whom he looks for that personal service to see that the entire conditions of the policy contract are fulfilled. On large risks he goes through a service, giving effort similar to compensation. Most of these things come up from a claim developed because then he will find situations in which the assured has been placed that proper preventive measures could have prevented. It is his duty to advise with his assured to possibly dispense with the services of some of his personnel, at all times giving him the information which he has secured as a result of this accident. In the public liability lines you make an inspection of the premises before you assume the hazard for the company and, working in cooperation with the engineering department of the company, you try to have eliminated all hazards that are visible. The resident agent works with the assured to see that these recommendations are complied with. This has its dual purpose—improves the loss ratio of the company and benefits the assured who does not want the accident to happen. I believe you could go on through each type of insurance.

Q. Is what you have said somewhat typical of the various types of coverage which the company you represent covers?

A. Yes, sir.

Q. Does your company provide an engineering staff in Virginia?

A. Not full time. It is a service which is subject to call and periodically an engineer visits the state, my risks in [fol. 454] particular, and makes a cooperative survey with me as the agent.

Q. Does the company hold this service available for you at any time that you request it?

A. Yes, sir.

Q. Is the service usually rendered at your request or at the request of the assured?

A. I don't recall any assured having asked for it. It has been at my suggestion in each instance.

Q. Have you had any experience with the State Corporation Commission in connection with rate-making or classification or anything of that kind?

A. Directly with the Corporation Commission, no. The Virginia Auto Administrative Bureau and the Virginia Insurance Rating Bureau are as far as I have ever found it necessary to go. They are, I presume, under the control of the Corporation Commission and that is as far as I have ever had to take any matters.

Q. Give an illustration of your contact with those bodies?

A. If I may cite a fire risk, we made a survey which brought us into one of those bodies, the Virginia Insurance Rating Bureau. We found conditions in the risk which had to be passed upon by that rating organization. That is usually done with a plat drawn of the risk showing exposures and types of construction and properly equipped with a broker's letter of authority from the owner, we can then sit down with them and devise the rate on the risk as it now stands and with possibilities of change to the advantage of the owner. Automobile-fleet-wise our contact [fol. 455] would be to describe the particular operation of the assured to see that the various classifications of long and short haul were met by him and sometimes a conference clarifies in the agent's mind and the truck operator's mind the proper classification so that he will know he is paying the just premium. Those conferences get rid of the differences and both understand what should happen. Under compensation insurance I have had no technical points which required the administrative bureau to get into the picture to any large extent.

Q. Do you have any service to perform in connection with the preparation of proofs of claim in any casualty or surety cases or is that largely confined to fire cases?

A. No, sir, I follow the casualty claims one hundred per cent from the minute of the accident until the claim is settled, more so than in the case with a fire claim.

Q. What do you do when you follow the claim?

A. I investigate the accidents of our clients. We avail ourselves of every opportunity immediately to gain information helpful in preparing the proper defense should a claim

result. We constantly consult with our assured to see that he does not do things which might prejudice him. It is possibly the first one he has ever had and he looks to one with a few more claims experience than he has had to guide him. We stay right with him and when it becomes a legal question it is turned over to our attorney for further handling in court, and when the claim is adjudicated, in our particular case, I issue a draft on the company's bank in payment of the claim and take the proper releases.

[fol. 456] Q. What is the compensation which you receive for all of this service which you have just described?

A. We receive a commission differing with the various types of business which we sell. There is a scale of commissions made on each contract as to what you will receive on personal accident business, which is in excess of what you will get on automobile risks, and still less commission on your compensation premiums. It is all based on a percentage of premium on that particular risk set out in the contract between the agent and the company.

Q. Does the contract between you and the company provide for rendering by you of this type of service which you have spoken of which you render to the assured?

A. No, sir, it does not give it in detail. The usual contract—I cannot quote the words—obligates us to render service to the assured and that is my construction of the service.

Q. Suppose there is a case of controversy between the assured and the insurance carrier, what position does the Virginia resident commission agent occupy in a case of that kind?

A. With the purchase of an insurance policy he is my client. It is my job to see that he gets what his contract calls for.

Q. Do you intend by your answer to state that that is your individual idea of the relationship between a resident Virginia commission agent and the assured and the company or is it the customary relationship occupied by such agents generally throughout the state, so far as your experience has been able to inform you?

[fol. 457] A. That is customary.

Q. Is the resident Virginia agent generally available to the assured for consultation and advice with respect to interpretation of the contract and the assured's duties thereunder or any other matters relating to the coverage?

A. Yes, sir, the agent issues the contract and advises the assured as to his requirements and obligations.

Q. To what extent has your business consisted of Virginia coverage contracts in the casualty and surety lines which have been negotiated outside of Virginia, covering risks in Virginia?

A. Prior to 1936 no experience whatsoever. Since that time I have had a limited number of small casualty coverages, none of which have been located in my own community. Very few of these contracts have remained in force. They have been of such small size as not to induce the agent to travel the distance to make a contact with the assured to be in position to help maintain the policy in force. I would say my experience is very limited on a non-resident casualty policy.

Q. Were you present at the meeting held on February 13, at which a resolution was adopted upon the subject of the general duties and functions of Virginia resident commission agents in relation to Virginia coverage contracts negotiated outside of the state?

A. Yes, sir.

Q. I hand you a copy of that resolution and ask whether or not, in your opinion, the resident Virginia commission agent will, in the future, comply with the general duties and [fol. 458] functions of such agent in connection with non-resident business of this type with which such local resident agent may be associated hereafter?

A. Yes, I believe he will.

Q. Is it your intention to comply with the provisions of that resolution as to any business which may be sent to you or your office by the casualty and surety company which you represent?

A. Yes.

Q. I wish you would please state whether or not, in your opinion, a non-resident broker or a non-resident agent is in a position to render satisfactory service to an assured or to the insurance carrier in connection with local risks in Virginia unless such non-resident agent or broker makes a personal visit to the state and fairly familiarizes himself with the conditions pertaining to the risk?

A. My answer would be no. If you want an illustration, I can give it.

Q. I wish you would state your reasons on which you base your answer to this question, Mr. Clark?

A. In the event I were the originating agent on a piece of business located in another state, far removed from me, I would not be in a position to give that risk the attention which the assured is entitled to receive that far removed from it. I would say the same would be true on a risk in Virginia controlled by a non-resident broker far removed from the scene of the risk.

Q. How about the interest of the carrier which does not maintain an efficient branch office with a large, competent, force of salaried representatives?

[fol. 459] A. If no such branch office were maintained, it would be increasingly important that a resident agent be associated on the risk.

Q. You mean from the standpoint of the insurance carrier?

A. Yes, I would say that.

Q. You spoke this morning of the service which you would be accustomed to render and also, in your opinion, other Virginia agents would render in connection with several types of coverage. I believe you spoke of automobile fleet liability policies and workmen's compensation policies. I wish you would use those same types of coverage to illustrate the position which will be occupied by a non-resident agent or broker in relation to a proposed risk of either type and also in relation to the service to be rendered during the life of the risk.

A. The assured loses the contact of the interested associated agent on the risk during the term of the policy. The non-resident broker is not available instantly when service on the risk is needed and at removed locations immediate company facilities are not always available. Hence the insured is entitled to that resident agent service which would be available to him when he is associated on the risk.

Q. Do you believe that the need to the assured of the services of a resident commission agent is greater or less in cases where the insurance carrier does not provide an extensive local engineering or other service organization?

A. The resident agent service in removed locations would be just as essential in either case. My personal experience [fol. 460] would not carry me into cities where active so-called service offices are functioning. I speak of removed locations because that is my major experience and in those cases the resident agent is valuable to the assured. Also, being closer to the risk, he is of considerable value to the carrier.

Q. Do you think it is important to the rendition of proper service for an agent to be personally familiar with the facts and circumstances attending the risk involved?

A. Yes, sir.

Q. What records does your office keep with reference to the total amount of premiums charged on policies passing through your office?

A. We keep an annual record of the business written by classes. It is kept monthly but tabulated annually by premium volume.

Q. Would your records disclose whether the premium charge originated from negotiations inside this state or whether the same resulted from outside of the state negotiations?

A. The records would disclose that condition.

Q. Then is it or not true that if the Insurance Department or its officials should desire information for taxing purposes of the amount of premiums involved in business written through your office, this information could be obtained through your office?

A. Yes, sir.

Cross examination.

By Mr. Christian:

Q. Mr. Clark, are you, under your contract with your [fol. 461] company, which I believe you said is called the Century Indemnity Company, a general agent of that company or local agent?

A. General agent.

Q. How many sub-agents work under you?

A. At the present moment, none.

Q. If you left off the words "At the present moment," what would be your answer?

A. There have been.

Q. How many?

A. One.

Q. Where did he maintain his office?

A. In my office.

Q. Does your company maintain a salaried claim department in Virginia?

A. I wouldn't know how they were compensated but they have claim offices in Virginia, two in Richmond and Washington, D. C., which is just as close to me, and in other

various sections of the state. How they are paid, I am not qualified to state.

Q. Does this claim department investigate accidents in your territory?

A. Should I request it, yes, sir, but that has not been necessary in the handling of my business recently.

Q. It has not been necessary?

A. Recently.

Q. You mean you don't have any accidents up there or just what do you mean?

A. We attend to them ourselves and report direct to the home office claim department.

[fol. 462] Q. Do you receive any special compensation when you go out and investigate and report on an accident?

A. Yes.

Q. At what rate of compensation and by what method?

A. Percentage of premium volume controls that.

Q. Do you get a larger compensation if you investigate that accident than you would if you didn't investigate it?

A. As a local agent we do the investigating. I may not understand what "investigating" means. An agent would investigate a claim in looking after his client's interest but in the final adjustment of it I am paid a certain percentage of premium volume for seeing it through to its definite settlement.

Q. Do you know what the general agent's commission is on automobile business in Virginia?

A. Twenty percent.

Q. Under this contract of yours what do you get for handling automobile business?

A. Twenty percent.

Q. And you never, under any circumstances, get any more than that under this provision about premium volume that you spoke of?

A. That would not be included in your commission contract.

Q. Have you got some other contract?

A. It is by adjustment agreement to cover the expense if I go further in handling this matter for the company.

Q. Am I correct then in my assumption that you have two contracts with your company, one your agency agreement [fol. 463] and the other your agreement as an adjuster?

A. I have never termed it as an adjuster, no, sir.

Q. What do you call that agreement?

A. I call it reimbursement for extra expense involved.

Q. Because you are doing this claim work?

A. Yes, telephone charges and things that go in to make up transportation in adjusting.

Q. Clerical work too?

A. Clerical detail. I doubt if it pays for the time.

Q. So in addition to the maximum general agent's commission scale, you do receive some other compensation from your company as a result of these activities in connection with claims?

A. To defray the expense of it to that extent, yes.

Q. Do you have a separate letter agreement covering your inspection services?

A. No, sir.

Q. Under which contract do you do that?

A. My production contract.

Q. Does the company maintain any engineering department in the state?

A. No, sir. As testified this morning, a man is available, not living in the state, subject to call by my office.

Q. Why is it that you prefer to make those inspections instead of calling on him to do it?

A. Because it is immediate, because it is an additional service to the client.

Q. What is the annual premium income of the Century [fol. 464] Indemnity Company in Virginia?

A. I do not have the figures but approximately about $180,000.

Q. How much of that is through your agency?

A. Approximately $35,000.

Q. These inspections that you want to be immediate and, therefore, perform yourself, are always inspections after the contract, in connection with which the inspection is made, has taken effect or are they inspections as an incident to putting the contract into effect?

A. They are both. They are incident to putting it in effect and to continue so long as he remains a client of my office.

Q. And what are the occasions, after the contract has become in effect, when you need an inspection so quickly that you can't wait for the salaried engineer to make it?

A. His attention is not constant. Mine can be and is.

Q. I mean what is it that you are inspecting that you must inspect so immediately?

A. Upon the occurrence of an accident, as defined this morning, certain facts are revealed as to the physical condition of equipment or the human element involved in the assured's risk.

Q. Do you make a report of that inspection?

A. To my insured immediately.

Q. I mean do you make a report to the company?

A. No, sir, not unless the assured fails to correct it.

Q. Do you do the claim adjusting in connection with that accident too?

[fol. 465] A. Yes, sir.

Q. Don't you have to report to the company how the accident took place as a part of the claim adjustment?

A. That is right, sir.

Q. I must have misunderstood you when I understood you to say that you did not make a report to the company of the results of the inspection?

A. Unless the assured fails to comply. There are suggested changes or recommendations I might make to him to improve the risk.

Q. But you have to make a report to the company if an accident has occurred, don't you?

A. Yes, sir, a complete detailed report is made.

Q. Doesn't that report include what you found out as to the cause of the accident when you made your inspection?

A. Yes, sir.

Q. Then you do report to the company the results of your inspection, don't you?

A. Under the claim report, not under the inspection report. You are dividing the two, are you not?

Q. No, I am trying to find out when there is an accident and you make a report, you report the results of the inspection to the company as a part of your claim report?

A. Usually it is with the statement to the company that the defects found that caused this have been agreed to be corrected by the assured. I don't recall having to send one in that was not the final report along with the claim.

[fol. 466] Q. But the fact is in actual practice that you do report it to the company as a part of your claim report?

A. That would be true.

Q. Why is it that you consider that is a part of your production work and not a part of your claim adjustment work for which you are specially compensated?

A. When the claim settlement ends, recommendations for further improvement of the risk would not be claim service. That would be service to the assured to which he is entitled, I being his resident agent on the risk.

Q. You claim then as a part of your service to your assured that after an accident has taken place and you discharge your duty as claim adjuster for the company and have paid whatever has to be paid because of the accident, you then sit down and write to the assured and tell him he had better change this, that, or the other so as not to have a similar accident in the future and that you are doing that as a part of your service to the assured and you are not doing that for the company?

A. That is right, sir.

Q. And that is the way in which you get the good will of the assured and cause a tendency toward a lower loss experience on his risk; is that right?

A. That would react to his favor, yes, sir.

Q. And you would hope by doing that that he would give you the renewals of his business and also some additional insurance business as a result of your helping him that way; is that right?

A. Continue his good will, yes, sir, that we already maintain.

[fol. 467] Q. What would be the effect if you didn't make that suggestion to him? Would you be liable to him in a damage suit?

Q. I understood you to say you owed him that duty; is that correct?

A. That is what I consider that I owe him—all the service I can possibly give him.

Q. And if you didn't make that report you would consider he would have a right to sue you?

A. I don't think you have a right to put me in that position. There is nothing in the contract, written or verbal, that requires that I do it. My construction of the service to my assured is my construction.

Q. You do it as a voluntary matter then and as a part of serving him to advance your relationship with him?

A. Not only does it advance my situation with him but also of the company which I represent.

Q. It is for the general good of your business, the company's business and the assured's business; is that right?

A. Absolutely.

Q. And you think it is a voluntary thing that makes you a success or a failure, whether you do it or don't do it; is that right?

A. On that service I hinge the growth of my business, yes.

Q. And it is for you to say how much, by means of such service, you will encourage that growth or discourage it?

A. It has a great deal to do with maintaining the growth. An agent who does not do it is easy to compete with.

Q. Mr. Clark, having reference only to casualty and [fol. 468] surety business, what business of that sort do you produce that covers other than in Fredericksburg and its vicinity?

A. It is limited but I have had some involving contractors.

Q. And at other points in Virginia than Fredericksburg?

A. I thought you said outside of Virginia?

Q. In or out of Virginia. Where have they been? In or out of Virginia.

A. We will take, for example, Louisiana. A contractor in my town secured a contract is Louisiana.

Q. When was that?

A. The latter part of 1937, speaking of that particular case.

Q. What sort of contract was it?

A. Compensation and contractor's liability.

Q. Did you have a Louisiana agent associated with you in that production?

A. Yes, sir, I knew of no Louisiana agent by name. The man would be there some months handling this contract and I was too far removed to render any service to him on the job. So I submitted it to the company for a recommendation as to someone with whom I could associate my office and service the risk while it was there.

Q. And you divided the commission?

A. Yes, sir. I don't know whether we divided it equally or what the percentage was but a separate policy had to be written. I could not extend his Virginia coverage by endorsement. A separate contract for that particular contract had to be executed by the Louisiana agent and my assured informed me that my letter to the resident agent

[fol. 469]brought forth the proper forms for that state and explanation as to how they should be completed and he followed the whole risk during the seven or eight months that it was there.

Q. Do you know whether the Century Indemnity Company has a claim service department and an engineering service department with permanent headquarters in Louisiana?

A. I do not know myself. I do know that the assured stated to me that his claims were given excellent attention and properly looked after and, also, before any claim occurred, when he first arrived on the job, he was contacted by a representative there and told how to proceed and that he would guide him through the whole operation.

Q. Who contacted him?

A. I understood the resident agent who wrote the policy for me through the company.

Q. You don't know whether it was the claim man or the engineer or the agent?

A. I wouldn't be in a position to say. More than one person did contact the assured.

Q. On what other occasions have you produced casualty business that covered outside of the Fredericksburg vicinity?

A. You would think close to Washington that I would have some but I have transferred policies on Fredericksburg residents who have moved to the District of Columbia. I have transferred those by endorsement on the policy then in effect but, upon termination, they were advised to place it with a local agent and name our company and I did not share in the commission. That agent is entitled, I thought, [fol. 470] to the commission since he was servicing the risk.

Q. Why was it necessary to make any endorsement on the policy?

A. Premium change due to different location.

Q. Was that business in Louisiana placed with the Century Indemnity Company?

A. Yes, sir.

Q. About these people that move from Fredericksburg to Washington—were they single car automobile risks?

A. That is right.

Q. There was no remaining Virginia coverage under those risks after they were moved to Washington?

A. The policy does not restrict its coverage to any state. It operates where the car may be in an accident. The place of residence of the assured is shown in the contract. When that is changed it may increase or decrease the hazard and an endorsement effects the change and shows where the car is principally used which is information the company should have and they are entitled to the premium or the assured is entitled to the refund, whichever the case may be.

Q. Do you happen to know who places Ben Pitt's casualty insurance on his theatres around the state of Virginia?

A. In its entirety I wouldn't know.

Q. Do you have any of that line?

A. A small amount. I understand, if you want this in [fol. 471] the record, that doing business in various localities, it is his choice that agents in those localities be favored with the business direct and, therefore, I am not the broker of record on various risks. He places it in Leesburg, for example, with the Leesburg agent, in Newport News with the Newport News agent, and so on.

Q. Did Ben do that before the 1938 Act became effective or was he only enabled to do that by this Act?

A. His actions today are the same as they were, to my knowledge, prior to '36 or '38 or any other time.

Q. In the Louisiana case did your contractor tell you that he wanted you to split those commissions with a Louisiana agent so he could have a local contact?

A. No, sir, it was my suggestion to him.

Q. Was it Government business, State business, municipal or parish business or was it a contract for somebody else?

A. I couldn't give you an affirmative answer but I think it was public work.

Q. Don't you know that in most states you can't do public work without associating a local agency in the bond coverage?

A. I would not know, but a risk of that type we submit to our company which has an agency department and is in a position to know what the rules are and the laws in various states. That advice is sought and their answer is final, so far as I am concerned.

Q. Did they tell you in this case you had better get this Louisiana agent?

[fol. 472] A. No, sir.

Q. Leaving out the Louisiana case and leaving out the case of these people with single car automobile coverage who moved from Fredericksburg to Washington, have you been the producer of any business you can recall that covers outside of the Fredericksburg vicinity?

A. So far as out-of-state business is concerned, definitely no.

Q. How about in other sections of the state outside of Spotsylvania County, for instance?

A. Well, I have accepted brokerage in my office from agents as close to me as Arlington County. That is fire business. I have brokered two agents in Alexandria, as close to me as that on fire business within the state. They are resident agents the same as I am and a division of commissions is made on a fifty-fifty basis.

Q. That is where you produce the business and broker it to them?

A. Yes.

Q. Do you have a Sanborn map with the Alexandria risks on it in your Fredericksburg office?

A. I do not.

Q. Do you have a rate book in your office that shows the rates on Alexandria fire risks?

A. I do not.

Q. Have you ever handled or had any personal contact with the servicing of a schedule fidelity bond with coverage in more than one state?

[fol. 473] A. No, sir.

Q. Or with an automobile policy with coverage in several states?

A. No, sir. My only fleet experience has been risks located in Virginia that did go as far as the District of Columbia and back to the location in Virginia.

Q. Where would be the place where the garage for the cars is located?

A. In Virginia.

Q. At Fredericksburg?

A. Yes, sir.

Q. Have you ever had any experience in theatre chain public liability or merchandise stores public liability?

A. Merchandise stores, no; theatre chains or any large chains, no.

Q. Have you ever had any experience in servicing multiple location plate glass policies?

A. No, sir.

Q. Have you ever had any experience in servicing multiple location compensation policies?

A. The furtherest that goes is a contract that might have three or four jobs under way at the same time.

Q. Around Fredericksburg?

A. Well, in the state—not necessarily confined within fifteen miles of Fredericksburg. It might be at Leesburg; it might be at Williamsburg.

[fol. 474] Q. Have you customarily brokered that business for the locations that were not in Fredericksburg?

A. I have never had one of sufficient size to go into any connection there, I being the best point of service for the Century on those particular risks. I say that for the reason that the personnel of the man's organization is regularly domiciled in Fredericksburg and would return there for the settlement of a claim from the accident.

Q. Did you furnish accident service on those risks under your letter agreement?

A. Yes, sir, I adjusted every claim, went to the risk and inspected its hazard, and visited it myself personally frequently.

Q. Do you know how many resident agents in Virginia hold Century Indemnity Company licenses?

A. I know there are in excess of three or four and, my opinion would be, in excess of thirty or forty. How much in excess I am not in position to say.

Q. What is the population of Fredericksburg?

A. Around 8400 in the corporation limits.

Oscar H. West, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. West, I wish you would state your full name, age, residence and occupation?

A. Oscar H. West; 44; residence, Richmond; Manager of the Virginia Association of Insurance Agents, Incorporated.

[fol. 475] Q. Do your duties as manager require you to

keep a record of the minutes of the meetings of the Board of Directors?

A. Yes, sir, they do.

Q. I hand you herewith what purports to be a copy of the resolution passed by the Board of Directors of the Virginia Association of Insurance Agents, Incorporated, February 13, 1939, the correctness of which appears to have been certified by you as Manager and will ask you to state whether or not you have compared that resolution with the resolution as it appears on your minute book and whether the same is correct?

A. Yes, sir, I have and it is.

A. Yes, sir, it was passed unanimously and is so recorded in the minutes of that meeting.

Q. I will ask you to file this copy of that resolution and mark it Defendants' Exhibit B.

Mr. Christian: The resolution offered as Exhibit B is objected to for all of the reasons for which the defendants' Exhibit A was objected to except the reason assigned as one objection to Exhibit A that it was a mere purported copy of a purported copy.

(The copy of the resolution was filed and marked Defendants' Exhibit B.)

Q. Mr. West, I hand you Defendants' Exhibit A which was filed yesterday with the testimony of Mr. DeJarnette. This exhibit purports to be a bulletin issued under your signature as manager of the Virginia Association of Insurance Agents, Incorporated, issued February 17, 1939. I will ask [fol. 476] you to state whether or not a copy of that bulletin has been mailed to various insurance agents of the State who are members of your Association?

A. Yes, sir, it has.

Q. How many members are there of your Association?

A. 320 today, I think. The membership is by agencies, not individuals. There are 320 member agencies.

Q. Do you know the number of individuals represented by that?

A. An average of five per agency as established by a national poll on that a couple of years ago.

Q. Has the Board of Directors of this Association in the past adopted resolutions relating to the policies and practices of the business of the membership?

A. Yes, sir.

Mr. Christian: I insist on my objections to the resolutions and the bulletin and the Constitution and other evidence respecting this Agents' Association. Without waiving that objection but intending to insist upon it, and to have any benefit from my own questions, if the objection should be overruled, I now ask the following questions:

Cross examination.

By Mr. Christian:

Q. I notice here on page 17 of the proceedings of the Fortieth Annual Convention, held June 24 and June 25, [fol. 477] 1938, a report of the President of your Association, J. Davis Ewell, and I want to read an abstract from that report and ask you to say whether I read it correctly.

Q. I will ask you if I am correctly reading from the report of the President on page 17 as follows: "Past President Hancock made the statement that in 1936 we for the first time in the history of the Association succeeded in passing some aggressive legislation designed to help agents. During the past year under the able leadership of Chairman Edmund T. DeJarnette, we again took the offensive and secured passage of House Bill No. 151. The enactment and enforcement of this bill should mean thousands of dollars in commissions annually to the agents of Virginia." Is that correctly read?

A. That is correct, yes.

Q. Is that gentleman, Mr. DeJarnette, who is spoken of there the same gentleman who has been a witness in this case?

A. I wasn't present but I believe so, yes, sir.

Q. Is that House Bill No. 151 the Act of 1938 which is being challenged in this case?

A. It is, a portion of it.

Q. Further on in his report I notice this, which I will ask you to say whether I am reading it correctly. This paragraph is headed "Casualty and Surety Companies."

"In a business, relatively speaking, in its infancy, we greatly deplore the lack of harmony and mutual confidence existing between companies and production forces. It is our firm conviction that the Casualty Companies might well [fol. 478] take a look at the experience of the Fire Companies and profit accordingly. The Agents of Virginia have heard with much concern rumors that House Bill No. 151,

regulating countersignature and commissions to non-residents will be contested. Why, we naturally ask? Hasn't North Carolina and other States had similar requirements for years? Haven't we, as agents of Virginia, exhibited a remarkable degree of loyalty to organization companies? Did we not evidence a wonderful degree of restraint when we were accorded the lowest degree of commission paid for automobile liability and property damage existing in any State other than Massachusetts? On what possible ground can this Bill be contested? It does not harm the public. It does not call for any increase in cost to the companies. From our point of view, frankly, it appears that the principal reason is that certain influential companies prefer to favor the non-resident as against the resident agent. I believe I express the attitude of an overwhelming majority of our members when I say that they will bitterly resent such action and will fight to protect their rights. I am informed that our sister Associations in the South are looking on with a great deal of interest the action of the Casualty and Surety in their proposal to contest this legislation. This attitude is not unanimous, however, as some of the companies have assured us that they would not join in contesting our bill through the courts. To those companies I wish to express my appreciation for their spirit of co-operation."

On page 24 where you made your report I would like to ask if I correctly read this extract from it. Before I pass [fol. 479] from the last one, did I read that correctly?

A. Yes, sir.

Q. Now I come to this one:

"Prior to the convening of the 1938 session of the General Assembly early in January my time was largely spent with the Legislative Committee, co-operating with the State Insurance Department and the Department of Statutory Research, working on the draf-ing of House Bill 151. It might interest you to know this bill was actually redrafted some eleven times before it was ready for the Legislative hopper. During the Legislative Session in January and February and early part of March practically every day found me either at the Capitol with Mr. DeJarnette of the Legislative Committee, or in conference with Mr. Barrlow, sponsor of our Bill, Attorneys representing the Mutual or Reciprocals, or local agents and others interested in the

proposed legislation. During these two and a half months you gentlemen will recall numerous communications with reference to House Bill No. 151, it being a part of the functioning of my office to keep the membership posted as to the progress we were making in the House and Senate. At this point I would feel guilty of gross neglect if I did not specifically refer to the excellent spirit of co-operation and prompt response on the part of agency members over the entire state. When we called on you agents to contact your representatives in the Legislature, always you responded most admirably. Strange as it may seem, work on House Bill 151 was not without its humorous side. I recall one day Ed. DeJarnette and I had been over in the legislative [fol. 480] halls since about 10 A. M. We parted at his office about 5 P. M., thinking everything was running smoothly, but before I was able to remove my coat and hat in my own office ten minutes later, the 'phone bell rang. The voice on the other end, which I recognized as that of your Legislative Committee Chairman, said: 'Oscar, come on back down here. Hell has broken loose again.' I do not recall for the moment just what that particular hell was."

Did I read that correctly?

A. Yes, sir.

Q. Is all that true that you reported in there?

A. I think it is or I would not have made it.

Q. On page 37 of this book I notice that Robert I. Boswell, who was the witness who testified here today, is Chairman of the Casualty and Surety Committee of your Association; is that correct?

A. That is correct.

Q. Now I turn to page 35 and will ask you whether I read correctly from the report of the witness Edmund T. DeJarnette, Chairman of the Legislative Committee of your Association as follows:

"I became Chairman of your Legislative Committee in November, 1937. The other members of this committee are Mr. W. Taylor Johnson of Norfolk and Mr. Warren F. Curtis of Richmond, both of whom have given unstintingly of their time and counsel. May I now express publicly to Mr. Johnson and Mr. Curtis my sincere appreciation for their valuable assistance.

"The committee was advised that the Association had

[fol. 481] decided upon three objectives for the 1938 session of the General Assembly:

"(1) The enactment of a boiler inspection law.

"(2) The passage of a law requiring all policies covering in Virginia to be countersigned by a local agent and that the local agent receive at least 50% of the commission on such Virginia business.

"(3) Some form of qualification for agents."

Did I read that correctly?

A. Yes, sir.

Q. Is the Mr. Curtis there the partner of Mr. Boswell, the witness in this case?

A. He is.

Q. I go now to another paragraph of that report which I will ask you to verify my reading of. This is entitled "Countersignature and Commission Law."

"These two fundamental principles were accomplished in House Bill 151, which was passed by the General Assembly of Virginia with three dissenting votes. The Act, as passed, permits only Resident Agents (like you and I) to countersign contracts of insurance and surety. In other words, no salaried company representatives can countersign a contract of insurance or surety since noon June 21, 1938. The Act further provides for a commission of not less than 50% to be paid to Resident Agents, (Like you and I) for the countersignature of such contracts. Please let me take a few minutes of the time of this convention to impress upon you the valuable assistance that you agents [fol. 482] gave our Committee in our work with the General Assembly. I have never received finer support from any group of people than the members of this Association gave us. It was encouraging to your Committee to go over to the General Assembly and call on some particular representative to discuss with him certain features of our legislative program and have him reply by saying, 'Yes, I am thoroughly familiar with the bill for my 'local insurance agent' has already discussed it with me before I left home and telegraphed and written me several letters urging my support of the bill since I have been in Richmond.' Please remember that there is going to be future work for this Association in the General Assembly! No matter how busy you are, when this Committee asks you to communicate with your representative, please never fail to do so."

Did I read that correctly?

A. You did.

Q. I ask you then whether you think I am justified or not in claiming that you and Mr. DeJarnette and Mr. Boswell and Mr. Roger Clark are hostile and adverse witnesses to the plaintiffs in this case?

A. I do not think, Mr. Christian, that we should be considered or feel antagonistic simply because we are fighting for what we conceive to be right and proper.

Q. You admit you are fighting the plaintiffs in this case, don't you?

A. Me, personally, no.

[fol. 483] Q. Your Association?

A. Well, we sponsored the legislation which they are attacking the constitutionality of, if you call that a fight. It doesn't necessarily involve antagonism.

Redirect examination.

By Mr. Staples:

Q. Mr. West, in some justification for the effort which the Virginia Association of Insurance Agents is making to protect what it conceives to be its rights, I desire to read from an Associated Press article under date of January 8, 1939, headed "Dallas, Texas," from which the following appears, and I will ask you to state whether I read this correctly. This appeared in the Richmond Times Dispatch:

"Chairman William O. Douglas of the Securities and Exchange Commission yesterday said, in an interview, the South would have a large regional stock exchange of its own if S. E. C. succeeds in decentralizing the nation's financial structure.

"He said a main objective of S. E. C. was to take financial control from New York and Chicago in order that control of local business may be brought home 'where it belongs'."

Have I read that correctly?

A. Yes, sir.

By Mr. Staples:

Q. Mr. West, when Mr. Adair was on the witness stand a question came up for consideration and discussion between counsel for plaintiffs and the defendants in this case, and

[fol. 484] also Mr. Adair, as to whether or not there was general practice or believed to be a general practice prev lent in the City of New York, and perhaps some other larg cities, whereby the insurance brokers in what we conside to be an unfair competitive advantage over the local insu ance agents of Virginia and other states, were accustome to giving part of their brokerage to persons who were abl to control the insurance business of large companies, th idea being that this division of commissions operated a in the nature of a bribe or undue influence to control th throwing of that business. On January 30th there appeare in the News Leader an Associated Press dispatch from Ne York which gave a summary of the charges made by Di trict Attorney Dewey in connection with the so-called mi conduct of Judge Manton of that Circuit of which New Yor City is a part. One of the charges as to money receive by Mr. Manton, alleged to have been improperly receive is as follows: "$10,000 from an insurance broker in 193 on representations by Judge Manton that he would receiv the insurance business of Kings Brewery, a firm in whic the Judge's business partner, James J. Sullivan, was trustee under the Bankruptcy Act. It was repaid when th broker failed to get the business." Have I read that co rectly?

A. Yes.

Redirect examination.

By Mr. Staples:

Q. Mr. West, do you know Mr. Ray Murphy?

A. Yes, sir, I do.

Q. What position does he hold with the Association Casualty and Surety Executives?

[fol. 485] A. Assistant Manager.

Q. Assistant General Manager?

A. I don't know his exact title.

Q. What is the Association of Casualty and Surety E ecutives?

A. The Association of Casualty and Surety Executiv is composed of the stock casualty companies, approximate 60 in number. I base this on information I obtained throug a pamphlet sent me by the said Association of Casualty a Surety Executives, titled, in effect, "The Association

Casualty and Surety Executives, what it is and what it does."

Q. Do you know whether or not the plaintiffs in this case are all members of that Association?

A. I believe they are, sir. The pamphlet that I just referred to will verify that statement.

Q. I show you a magazine entitled "The Insurance Index," published monthly, the issue at hand being for the month of January, 1939, which contains an editorial by Mr. Alvin J. Davis, the Editor of that magazine, in which editorial the following appears as a quotation from a speech by Mr. Ray Murphy, the General Manager of the Association of Casualty and Surety Executives. I will ask you to please read into the record the portion of that speech which is a quotation from Mr. Murphy's speech and which I have marked.

A. "The capital stock casualty and surety companies believe in the American competitive system of private enterprise and they practice it. They adhere to it, even in the face of unfair competition, because they know it gives posi- [fol. 486] tive protection at the lowest possible cost and, insurance being a thoroughly human business, they know that every policy that is written must be supported by continued service to the assured, not merely at the time the sale is being made or when the day arrives for renewal, but throughout the life of the policy, day in and day out.

* * *

"The only medium through which this service can be rendered consistently is the agent in the field. He is less the representative of the company whose policies he places than he is the representative of the individual or company he insures. The capital stock agent is not a salaried employe who must respond to the direction of any one company or group of companies. He is a business man, doing business in his own local community. His first consideration must be his clients. That means greater protection for the public than is possible in the case of the direct-writing mutual which operates through a salaried employe."

* * *

"The services that the capital stock agent renders are many and varied. Insurance is a highly competitive business and the agent must be alert and active to survive. That, too, is in the public interest. From time to time he must advise his clients about the changes in policy forms

and rates, giving them full advantage of increased protection. He must be ready to see that his clients receive full and swift settlement of claims, and that all the protective features of the insurance policy are brought into prompt [fol. 487] play for the benefit of the assured. All of these things are in the public interest."

By Mr. Staples:

Q. Did you ever know Mr. Murphy personally?

A. Yes, sir, I met the gentleman personally on several occasions.

Q. Under what circumstances?

A. At the agents' convention and in the Virginia Association's office in Richmond, when he appeared in connection with legislation passed in 1938, in company with Mr. Lilly and other company representatives.

Q. Is Mr. Lilly now present?

A. Yes, sir.

Q. Whom does Mr. Lilly represent?

A. I understand he is Assistant General Counsel for the Maryland Casualty Company and, as such, is on the Law Committee of the Association of Casualty and Surety Executives.

Q. Was this conference which was being held in reference to the legislation or statutes now involved in this suit?

A. It was.

Q. And Mr. Murphy was representing what interest at that conference?

A. Stock casualty companies who were members of the Association of Casualty and Surety Executives.

T. Garnett Tabb, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Tabb, I wish you would state your name, residence, and occupation, please?

[fol. 488] A. T. Garnett Tabb, 2625 Monument Avenue. My business address is 1101 East Main Street; general insurance agent.

Q. With what insurance agency are you associated in Richmond?

A. I am the senior member of the firm of Tabb, Brockenbrough & Ragland, General Agents of the Travelers Insurance Company and local agents for four fire insurance companies and several bonding companies.

Q. How long have you been connected with the insurance business?

A. Nearly forty-seven years.

Q. In what capacity or capacities have you been associated or connected with that business?

A. Clerk, cashier, general manager and general agent.

Q. Would you mind stating the volume of premium business done through your office, approximately?

A. That is more or less a secret but put it at a half million dollars.

Q. Can you state, Mr. Tabb, about what proportionate part of that is fire insurance and what part is casualty and surety insurance?

A. I am giving approximate figures because I did not know that was to be asked, but I would say $125,000 fire, $250,000 casualty and various amounts of life, personal accident, bonds, boiler and all other types.

Q. I wish you would state if your experience has been such as to acquaint you with the different functions and general scope of duties and activities in the insurance business of so-called company representatives who are employed [fol. 489] on a salary basis and the so-called commission agents?

A. I think it would be generally conceded that a commission insurance agent recognizes his first duty to his policyholders as a matter of good business policy. By that I don't mean to say that he would forget his allegiance and care for his company's interest. Frequently, however, there is some conflict between the interests of the two and the insurance agent acts as an arbitrator and frequently gets both parties together, preventing court action and finally satisfies both parties as to the justice of the conclusion reached.

Q. Has your experience brought you into contact both with the assured and the insurer, as well as the salaried representative of the insurer located in Virginia?

A. Frequently and almost daily.

Q. What casualty company do you represent?

A. Travelers Insurance Company of Hartford, Connecticut.

Q. What fire insurance companies do you represent?

A. The Continental Insurance Company of New York, Travelers Fire Insurance Company of Hartford, the Fire Association of Philadelphia, the London Assurance of London, the Old Dominion Fire Insurance Company of Roanoke, Virginia.

Q. Has your agency, with which you have been connected since your first experience in this business, handled the placing and securing of fire insurance policies?

A. Yes.

Q. Are you thoroughly familiar with the customs and practices of the fire insurance business in Virginia?

[fol. 490] A. Yes.

Q. Have you also had experience and, if so, to what extent, in the fire insurance business in other states?

A. I have placed fire insurance business in many states. I don't find their regulations much different from those in Virginia. I have passed the examination of the New York State Insurance Department for a license.

Q. Will you please state the various customs which have prevailed since your first association with this business with reference to the division of commissions between the Virginia commission fire insurance agent and a non-resident agent or producer who negotiates a Virginia coverage contract outside of the state where that contract or policy of fire insurance is sent to a Virginia agent for countersignature?

A. It has been uniform practice for many, many years to divide commissions on such policies. These policies of insurance are issued at the Home Office of the companies, wherever located, almost as frequently as they are issued by the local agents in Virginia. Both practices prevail uniformly with no differential in the commission to the Virginia agent, whichever practice is used by the particular company concerned.

Q. Would you state your best estimate of when that practice began?

A. I understand long before my connection with the fire business which covers a period of approximately twenty-five years.

Q. I wish you would state briefly the service which it is customary for a Virginia resident fire insurance agent to [fol. 491] render in connection with a fire insurance contract negotiated by a non-resident agent or broker covering a

Virginia risk where the business is referred to a local Virginia fire insurance agent in the manner you have described. I mean beginning with the time that the matter is first referred to the Virginia commission agent.

A. He first looks over the form attached to the policy, which form is supposed to furnish the bulk of the protection on the particular risk to be covered. He then figures the rates to see if they are proper and then countersigns the policy and either returns it to his home office or sends it direct to the broker in accordance with the instructions received when he was asked to countersign the policy. He may inspect the risk if he has any misgivings as to the coverage or the rate and communicate with the broker or the company if his opinion is that some fault exists in the coverage or some improvement may be possible. I would state that changes under such conditions are not very numerous because both the company and the broker have compiled it but when some differences occur and the agent corrects them he feels—at least I do when my firm signs a policy—that we have a personal liability, at least moral liability, for the correctness of the coverage and the carrying out of the contract proposed.

Q. I wish you would state whether it is customary for the Virginia resident commission agent in such a case to render substantially the same service during the life of that policy as he would render if the policy had been solely negotiated by the local Virginia agent?

A. The agent would not expect to be called on for quite [fol. 492] as much service as the agent producer but he would expect to answer any requests for service from the resident representative of the foreign corporation, if such be the owner of the property, and he would expect to render to both his company and the insured just the same service if it was needed. In fact, we usually make a practice of writing either the broker or the insured, offering our services when we countersign a policy.

—. I wish you would please state the nature of the services rendered by a resident Virginia commission agent where he himself negotiates the contract with reference to casualty and surety contracts covering Virginia risks?

A. Well, he is very particular to see that the policy is first written correctly after he gets all the information possible on which to base the policy. He expects to keep in close touch with the insured and particularly if any accident

occurs or any claim arises under the contract, and he is always looking forward to super-service to enable him to hold the risk and add to the business of the same assured.

Q. Take, for illustration, a fleet automobile liability policy and state what would be the usual service an agent would render from the very beginning of the transaction, that is, the time he begins to negotiate for the business or solicits the business up until the expiration of the contract?

A. Schedule or blanket automobile policies are growing in favor and nearly all corporations, doing an interstate business, are very open to the soliciting of an agent who knows his business and expects to write one contract in one com-
[fol. 493] pany, which usually takes up dozens of contracts with various companies and with no central authority to whom to appeal in the event of loss or rate questions or any other question under the various contracts he has formerly carried. We get a great deal of information from the home office of the company where a risk covers in eight, ten or twenty states and we also get information from the insured as to their former practice in handling their business which gives us many loopholes for improvement.

Q. I want to handle one state at a time.

A. You want an answer to a question referring to risks that cover in many cities in the state of Virginia.

Q. Or any fleet policy in Virginia that you might take to be an average fleet policy.

A. It isn't necessary to have any local agent in other towns to countersign that contract or to have any reference to it, in most cases. So the agent who writes that risk in Virginia usually does the whole job and goes to the towns, if there is any need for local service, and he might, if he incurred some purely local situation, call in some agent to help him but that very rarely arises in intrastate business.

Q. What does the agent do in connection with that—just the various acts that he would perform?

A. He sees that the policy is correctly written and the rates to the various territories where the cars are domiciled apply. There are rate classifications in Virginia that require very careful consideration; also whether they are pick-up body trucks or whether trucks, the rates being very
[fol. 494] widely apart on those two kinds of cars and it is often necessary to examine the cars personally to see whether a pick-up truck rate should apply or a truck rate, the pick-up rate being about fifty per cent of the truck rate.

He sees that the policy is correctly written as to rate and, of course, he is interested at all times in their losses and experience rating, if such rating applies, and performs every service as if the risk were entirely in his own city.

Q. Does he make more or less of a continuous study of that particular fleet and the problems that are presented by its operation and the equipment contained in the fleet, the drivers, and so forth, or just exactly what does he do?

A. Of course, he maintains a continuous interest in the risk and its loss experience and frequently has the inspection and claim departments of his company call the drivers into consultation for safety measures in which the agent frequently participates for the purpose of reducing the losses and thereby reducing the premium cost.

By Mr. Staples:

Q. Do you believe that a non-resident agent or broker living in New York or Chicago can render as satisfactory service in a case of that kind as a local Virginia resident agent can render?

A. I think the question would be answered by anyone "No," provided the Virginia agent attended to his business and for which he expected proper remuneration.

Q. Do you think that the actual contact by the agent with the physical conditions pertaining to the risk is important in rendering that type of service?

A. They should be.

[fol. 495] Q. When you spoke of being compensated for his service, what did you have reference to?

A. Some part of the commission because it is all based on commission and I never heard of any other kind of remuneration being paid for insurance service.

Q. Take, for illustration, a workmen's compensation policy which covers solely in Virginia; what is the service or work which a Virginia resident agent would customarily do from the time he begins negotiations to secure that contract until the expiration of the term covered by the contract?

A. He has to be careful about the various classifications covering the employees covered under the policy. Frequently it is necessary to take the matter up with the Virginia Compensation Rating Bureau in order to draw the line between the various classifications to be covered under the

policy and also secures adequate pay roll estimates on which the advance premium was based and sees that the coverage is adequate and properly written. He also continues his interest in it from an experience standpoint, if it is an experience rated risk, on which to compute the next year's or renewal premium. We take great pleasure in pointing out to the assured, on renewal of the policy, that we have secured a reduction in his rate due to favorable experience. In order to get that favorable experience we have inspection service and claim service discussed rather frequently, as often as necessary, because those two sources largely govern and compensation business is almost entirely based on the experience factor so far as changes in rate are concerned.

[fol. 496] Q. Does it require a personal contact with the operation of the industrial activity of the assured to properly perform that service which you speak of which is designed to improve the experience rating of the assured?

A. It is most imperative that we do that. In many cases we have to work hard on a big man, the President of a corporation, to interest him in safety and accident prevention. I know of cases where we have worked years to get a president to address his employees on the necessity and imperativeness of carefulness and other things that he can personally impress on them more than any agent or inspector and when we get a president to address his employees we have gone a long ways in accident prevention and this is peculiarly the duty of the insurance agent handling his business. In fact, the resident agent is about the only man that can get a president of a corporation to do that job.

Q. Suppose the corporation should be a foreign corporation with a Virginia manager; who would the agent take it up with in that case?

A. We would take it up first with the local manager and if the president visited the Richmond plant we would try to get the date and try to get him to do that job and if he couldn't do it or didn't wish to do it we would get a letter from him to put on the bulletin board of the plant or to be read to the employees which would emphasize that their jobs might be somewhat dependent on their paying attention to accident prevention.

Q. Would the resident commission agent call on the engineering department of the insurance carrier to render serv-

[fol. 497] ice in connection with inspecting machinery or anything of that kind during the progress of the risk?

A. Certainly. That is one of our very important services. They know the technical end and can speak authoritatively on the handling of the machines if there are machines in the plant and the agent enlarges on it from a human standpoint.

Q. What would you say as to the relative ability of a non-resident agent or broker to render the service you have spoken of with reference to the workmen's compensation policy as compared with that of a Virginia resident commission agent who is handling that same contract, either alone or in association with the non-resident agent or broker?

A. We are frequently called on by the non-resident broker to render this service. It is very expensive and almost impossible for them to keep in the same close contact with a local plant as the man living right in the city who knows the officials and patronizes them, in most cases, and he has a local influence that is very important. Most of the non-resident brokers, with whom I have dealings, call on me for that service and I frequently, through that service, get other business which I add to the sum total and make a profit for them and myself too.

Q. Do you know of any valid substantial reason why a distinction should be made in the basis of the compensation of local agents or a division of commissions in the casualty and surety lines from that which prevails in the fire insurance business where a Virginia risk is negotiated exclusively through a non-resident agent or broker?

[fol. 498] A. From my experience I think the service of a local Virginia agent with casualty lines and surety lines should be really more valuable than in fire insurance. The reason I say this is that fire insurance usually concerns a fixed structure or its contents which can be readily inspected and its value ascertained, whereas in the case of surety lines, and particularly casualty lines, the ramifications of coverage are tremendous and changing continuously. The agent with real knowledge of his business finds many places where the insurance coverage should be improved and does improve it. In addition he adds coverages which are essential and, in so doing, advances the interests of the broker, the insurance company and the insured, as well as himself.

Q. I notice that you represent two Travelers companies. One seems to be a fire company and the other a casualty and surety company; is that correct?

A. No, sir, casualty company only. The Travelers, and its companies, handle no surety business. I represent the Travelers Insurance Company for casualty business and the Travelers Indemnity Company for boiler, plate-glass, burglary and other lines, and the Travelers Fire Insurance Company for fire insurance, marine and allied lines.

Q. Is there a common ownership or affiliation between those various companies, do you know?

A. The Travelers Insurance Company owns both the other companies and operates them in the same home office building.

[fol. 499] Q. Do they all follow the same system of compensation to the Virginia resident agent as to business originating outside of Virginia, covering Virginia risks?

A. No, sir, the Travelers Fire Insurance Company adopts the long-established practice of paying the Virginia resident agent for countersigning the policy half the commission, whereas the other two companies do not do that.

Q. They do not pay the Virginia resident agent anything unless he happens to be associated with the risk at the request of the broker or the assured; is that true?

A. Yes, sir, that is true.

Q. I notice in an advertisement of the Travelers Insurance Company, with reference to automobile liability coverage, there appears this statement: "For the Travelers has thousands of agents and hundreds of claim experts all over this continent, ready to take over your responsibilities promptly, no matter when or where an accident happens." What do you understand to be the meaning of that advertisement which appears in the February 4th edition of the Saturday Evening Post?

A. The aforesaid advertisement is one of many nationally circulated advertisements by the Travelers Insurance Company which are of material value to their agents in building up business based on national and Canadian service. It means, under full understanding with the Travelers Insurance Company, that these advertisements are meant to be lived up to by every Travelers agent, whether located in a hamlet or a city. Frequently Travelers agents are called on for service, especially under automobile policies, where the accident occurs in his town or city and the in-

[fol. 500] sured has a card attached to the Travelers policy giving him this service. Agents are frequently called on Sundays and nights when the Claim Departments or offices of the company may be closed, to render service when accident or even other things, not actually covered under the policy, come up and the visiting automobile owner wishes some local service. We take great pride in this service and render it promptly and cheerfully.

Q. When the word "agents" is used in that advertisement, does that include resident commission agents as the term is used in the Virginia statutes, such as your agency?

A. Yes, sir, because of the fact that such commission agents are the only representatives of the company in practically all the territory where these accidents occur. Branch offices are located about one to a state and, therefore, when an accident occurs it isn't usually in a big city and, therefore, the local agent is the man who is supposed to and does give this service.

Q. Mr. Tabb, up to the time of the passage of the 1938 Act there has been no established practice with reference to association of a Virginia resident commission agent with non-resident agents and brokers, has there, in any line except the fire insurance line?

A. There has been no such practice unless the non-resident broker placed the business directly with a resident Virginia agent, in which case the agreement between them governed the handling of the business.

Q. Has there been a sufficiently large volume of that to enable you to say that there is an established practice in that connection?

A. No, there has been comparatively little of it.

[fol. 501] Q. I wish you would state whether or not in handling fire insurance contracts which have been sent in to you by non-resident agents or brokers, you have discovered [fol. 502] any flagrant irregularities or matters which you felt were not proper and should be corrected, and, if so, give an illustration or two of what you have in mind?

A. I wouldn't say that we have had very many cases of flagrant irregularities. We have found errors in forms in policies occasionally and have made suggestions that brokers have usually accepted as correct in the writing of policies sent by them. Our principal findings of errors have been where we secured business which had formerly been written by non-resident brokers. I mean by that the

securing of the business by our own office, in competition with the non-resident broker, who had formerly carried the line. I have in mind one case within three hundred yards of where we sit, involving a very large line written by a western broker, in which we found one or more very large policies written in non-admitted companies. When I called the attention of the assured to this irregularity and danger to their own protection, he was very much amazed that the broker had placed his risk in a non-admitted company and this, among other things, resulted in my securing the whole line. I think it fairly illustrates the point that non-resident brokers are guilty oftentimes of placing Virginia business in non-admitted companies and thus depriving Virginia of its tax on the premium and submitting their assured to trouble should there be a loss under controversy and, therefore, no recourse to the policyholder under Virginia law.

Q. By a non-admitted company do you mean a company which is not qualified to transact insurance business in Virginia?

[fol. 503] A. Yes, sir.

Q. Mr. Tabb, I hand you a paper marked Defendants' Exhibit B, which is a copy of a resolution passed on February 13, 1939, by the Board of Directors of the Virginia Association of Insurance Agents and I will ask you to please read that resolution?

A. Yes, sir, I have read it.

Q. I wish you would state whether or not, in your opinion, that resolution is in conformity with the general practice which has heretofore prevailed in Virginia in connection with the fire insurance company business where a non-resident broker has procured a contract and the contract is sent to the agent in Virginia, not by the broker but by the insurance company itself, and the broker has made no direct contact with the Virginia resident commission agent and, if it is not in complete conformity, please state what differences there may be?

A. This resolution expresses in large part what has been the custom but is somewhat more far-reaching in one particular and that is contact with the broker and the insured. This contact has been made in many cases but not a uniform practice. When a policy is sent to my office by a company we frequently have to write back and find out the name of the broker and insist on doing so in order to check up and see if the broker has a proper Virginia non-resident

broker's license which would permit the division of commission with him. We check the form of the insurance and go into many particulars, and the resolution alluded to is simply a forward step in rendering more efficient service and making it a uniform practice.

[fol. 504] Q. Is it or not your opinion that the requirement of the Virginia law that the Virginia resident commission agent shall be associated with the contract or policy to the extent of receiving fifty percent of the commissions has brought about a different situation and condition from that which existed prior to that legal requirement?

A. Yes, it is certainly to be expected that an agent receiving half of the remuneration under any insurance policy would consider himself morally obligated to render every possible service, both to the assured, the broker and the company. I would like to add this: The agents of the state of Virginia will certainly feel that this obligation is particularly important as it implies and would virtually make certain the renewal of the insurance in which he has an equal interest with the broker.

Q. As I understand your answer, you feel that the non-resident broker and the Virginia commission agent, associated with the contract, are jointly interested in servicing the business and retaining the business?

A. Yes, sir, without doubt.

Q. Mr. Tabb, you are a member of this Association of Virginia Insurance Agents, are you not?

A. Yes, sir, former President.

Q. Do you hold any position with the Association now?

A. No, sir.

Q. Do you think that the membership of that Association is representative of the agents who transact the largest bulk of the business of insurance agents in this state?

[fol. 505] A. Yes, sir, practically all of the agents of the state are members and I would say, without knowing accurately, that ninety percent of the insurance business of the state of Virginia is written and controlled by the members of the Virginia Association of Insurance Agents.

Q. During the life of a casualty or surety contract, is it or not frequently the case that an agent is called upon by the assured to explain the meaning of the contract and what the assured should do to protect himself under its terms?

A. Frequently the agent who countersigns a policy is called on for that service. Casualty insurance is under con-

stant changes, meeting modern conditions, and new policies are being written to cover these changes and agents have to be real students at the present time to properly represent both the policy holder and the company.

Q. Does a successful commission agent in Virginia interest himself in the making of rates and regulations by the regulatory bodies of the state and appear there, if necessary, or take any other steps in connection with that that he thinks appropriate?

A. Yes, agents, in order to sell business, have to be conversant with rates and forms and rules and constantly we have debates with the rating authorities as to classifications and experience ratings and in all other matters entering into the premium cost. We feel that we represent both the policyholder and the company and endeavor to maintain an equal balance between them. So it necessitates familiarity with all the matters that go into an insurance con- [fol. 506] tract. In claim matters frequently an agent has to point out to his company wherein the facts justify a claim payment and those facts are frequently overlooked by the professional claim adjuster.

Q. Mr. Tabb, some question has been raised with some of the other witnesses as to whether or not the records of the commission agent in Virginia with reference to business passing through his office, on which he receives commission, are customarily kept in such a manner as to provide information to the taxing authorities, if they desire to investigate the records, from which it may be ascertained what is the total amount of premiums written by the insurance companies passing through his office, including not only the business which the agent himself originates but also that which is sent to his office which is negotiated entirely outside of the state. I wish you would please state the nature of the records kept from that viewpoint?

A. For the most part we keep a copy of the record on which the policy is based, showing the premium, rate, the amount of insurance and other particulars. Some forms of policies, known as I. U. B. and F. I. A. forms of fire insurance, covering many states, we do not receive records of but checks for our portion of the commission, and in such cases we would not have a full and complete transcript of the policy contract.

By Mr. Staples:

Q. Could it be ascertained in that case what the amount of the premium for the Virginia coverage is?

A. Yes, it could be readily secured from the company and [fol. 507] very accurately computed from the amount of our commission which is, of course, based on the premium applicable to coverage in the state of Virginia.

Q. I believe it appears from the record, in the testimony of Mr. Adair, that a branch manager of a casualty or surety company, when he is called upon to countersign a policy, regards it as merely a perfunctory matter and does not even examine the policy to determine its accuracy or the correctness of the rate or any other matter unless he examines it as a matter of curiosity for his own information. I wish you would state your opinion whether or not a Virginia resident agent, who is required by law to be compensated to the extent of fifty percent of the commission involved in such a case, would view the transaction in any such light as that?

A. He certainly should not.

A. I would like to enlarge that answer. The Virginia resident agent must realize that the countersignature of the policy, involving a substantial commission to himself, is not a mere perfunctory act and he, for his own profit on future business, allied with the contract he signs, would render service and be very particular about applying his signature to a contract without knowing it is correct. Personally, when I sign a policy I feel that I am taking on some responsibility. In the case of a branch office salaried employee of a company, his signature adds nothing to the contract. It is only one more signature of the company issuing the policy, whereas the resident Virginia agent has personal responsibility which the company might not share [fol. 508] if it were claimed he had broken a Virginia statute or in any way made himself liable in addition to the company's liability.

Q. Mr. Tabb, I wish you would please state whether or not in your opinion the functions and duties of a Virginia resident agent who countersigns or is associated with a contract negotiated outside of Virginia would provide to such Virginia resident agent an incentive, not only to see that the contract is correct when he countersigns it, but also

to service same during the life of the policy and, if you are of this opinion, please state your reasons therefor.

A. Of course, he would appreciate his obligation to service the policy after seeing the policy written, both as to coverage and rate. I emphasize the fact that the Virginia agent places himself in a responsible position when he affixes his signature to a contract of insurance. I believe the continuance of his license by the State Insurance Department might be vitally concerned if it were proven that he had signed a policy which did not conform to the statutes of Virginia.

Q. Do you believe or not that the Virginia resident agent would have an incentive to render service in order to participate in the commissions resulting from the renewal of that policy or contract?

A. Certainly he does not stop his interest on receipt of commission on the one policy and it is our custom to visit the broker at the earliest opportunity and express to him our appreciation of the business and cultivate him for its renewal and more business and, if possible, to point out to [fol. 509] him any improvement possible in the contract and the coverage which, of necessity, impresses the nonresident broker with your knowledge of the business and your interest in his behalf, as well as your own behalf. I find brokers very cooperative under such circumstances and it also tends to keep the business with the company issuing the policy, rather than to have it changed around to other companies on expiration.

Q. If, as I believe you have stated, you consider, under the new Virginia statute, that the Virginia commission agent and the broker are joint owners of the expiration, so to speak (I believe that is the term used in the insurance business) is it or not true that the Virginia resident agent would have as strong incentive to render service to the assured and cause the assured to feel that the contract has been properly serviced by the resident Virginia agent?

A. I think it is universally the practice of Virginia agents to render this full service. We usually consider the broker, producing the contract, as entitled to first have objections or corrections brought to his attention and rarely is any objection raised by the broker to such changes as may be suggested by the Virginia agent who countersigns the policy and can show his familiarity with the risk concerned. The

interests of the two, broker and Virginia agent, are usually absolutely in accord.

Q. What would you have to say upon that same subject with reference to service rendered throughout the life of the policy after it has been written?

[fol. 510] A. The Virginia agent, of course, expects to render any service necessary throughout the life of the contract and the more service he can render the more apt he is to retain the business and the good cooperation of the non-resident broker who controls other business as well as the policy immediately in hand.

Cross-examination.

By Mr. Christian:

Q. Why is this law a vehicle to get for these non-resident assureds these so-called services of Virginia agents to which you refer? Are they not able to get them without this law by the simple expedient, when they place the business with the non-resident agent or broker of saying to that man, "I want you to retain half of this commission and I want you to get Mr. T. Garnett Tabb of Richmond to help you handle this business and give him the other half." Isn't that free and open to every assured without help from this law?

A. Of course, that is perfectly possible but I would say entirely Utopian.

Q. Why do you think it is Utopian?

A. Because the non-resident agent or broker has principally the profit in the transaction as his main interest and many agents in the state might be willing to do what has been termed a perfunctory act, and in large measure, it has been a perfunctory act heretofore before the passage of the new law and they are willing to do things with no idea of rendering any service. Of course, many brokers in [fol. 511] the past have been entirely willing to give over the work to an agent but that is rather the exception than the rule and that doesn't protect the assured or the company, and the assured in many cases doesn't look into it. Just as I told you about a case where a broker placed a non-admitted company's contract with a big assured within three hundred yards of this office and he was astounded when I told him the policy had no standing in Virginia.

Q. I am asking you why it is that the assureds, if this is a good law and if they want the services of a man like you, don't go to Johnson & Higgins or Marsh & McLennan and say, "I appreciate you are more or less specialists in my line of business and I appreciate you should get half the producer's commission for advising me and carrying my insurance problem load for me, but I am not willing to have you do that unless you get Mr. Garnett Tabb in Richmond and Mr. A. in Baltimore and Mr. B. in Washington and Mr. C. in New Orleans, and so on, and give them half of that commission so that I will know they are just as much interested in my business as you are and so that I will get their service." I am asking you hasn't that been free and open to assureds who are not residents of Virginia but with coverages in Virginia all the time without this law? That is a simple question that I should think you could answer yes or no.

A. No, I wouldn't want to answer a question yes or no.

Q. Hasn't it been free and open to assureds to do that if they want Mr. Garnett Tabb's services?

[fol. 512] A. Of course, an assured could make such a request but whether his broker would accede to it, or not, is another question.

Q. Then wouldn't it lie with the assured, if his broker wouldn't accede to it, to part company with that broker and give all of that business to Mr. Tabb?

A. It has been done.

Q. And this law isn't necessary to effect that in a case where the assured values Mr. Tabb's services, is it? That has been done to Mr. Tabb's benefit and the benefit of the assured, no doubt, in many cases, has it not?

A. I think so but the question is or rather the simple answer is that the assured has not in most cases considered any such improvement in his coverage and has, in the case of fire insurance, had it. It is a matter of fifty percent division on fire insurance for many, many years.

Q. Do not these same assureds that take casualty and surety coverage also take fire coverage?

A. For the most part and I dare say, or risk the opinion, that they think the local agent gets something out of the casualty business but that is something they haven't had presented to them. They never have thought of it in that light.

Q. Your statement on the record then is that people like Liggett & Myers, or the DuPont Company at Ampthill or the Life Insurance Company of Virginia or the Greyhound Lines don't know whether Tabb is getting a part of the commissions on their business or not? Is that your statement?

[fol. 513] A. No, they know that I am getting it on the fire insurance.

Q. I am talking about casualty and surety?

A. I don't think they have ever given it any thought and I don't know what would cause them to give it much thought.

Q. Then Tabb never has talked to them about any casualty and surety business except what he has placed with them up to the time of the passage of this law?

A. Well, I have told you that it has not been customary for agents to go direct to people like Liggett & Myers and DuPont but go through the broker as a matter of courtesy and the broker rarely, if ever, objects to recommendations and suggestions by the local agent.

Q. Your point then, as I understand it, is that you think these assureds think that they are already getting your services as it is and are entitled to your services as it is?

A. I don't think they could single out any individual except in cases where I mentioned this morning of certain big companies that designate the agents in Virginia who shall get their business.

Q. I mean these others. You think they think they are getting the service of some Virginia resident agent?

A. They think they are getting the service of some resident agent or the equipment of the company or full protection under their policy but the more intimate and close service of a local man has never been, in most cases, in my judgment, brought to their attention.

[fol. 514] Q. In most cases the principal officers of these foreign corporations with offices outside of Virginia are not in Virginia to have it brought to their attention, are they?

A. That is correct and, therefore, they just go along in the same rut until they strike some snag in a claim, or something of the kind, and then the local agent is called in or the local representative, if they can't get together. It is a matter of development. I can't give you exact answers to a question that involves relations that are constantly shifting and changing.

Q. And you are unable to answer or give me what is your explanation of why it is that if these assureds think they have anything to gain from the services of such a man as Mr. Tabb, they don't, without the help of this law, arrange for them to be made available by a division of the commission?

A. I think that if they were fairly told by the broker what this law meant, ninety-nine and one-half percent of the foreign corporations would be delighted with the Act and feel that they were getting a great deal more value for their premiums than they are now getting, without additional cost to them.

Q. Where a concern like the Homestead Hotel or the Greenbrier Hotel or the Liggett & Myers Tobacco Company or the Pet Milk Company or Marshall Field & Company at Martinsville is placing its insurance with Marsh & McLennan or Johnson & Higgins, or whoever they may be placing it with, have you in all your years as an insurance man sat back and never solicited any of those people to avail themselves of your services?

[fol. 515] A. Well, two of them in that bunch I have handled personally.

Q. You have handled it because you wanted to handle it and they wanted you to handle it; isn't that right?

A. Yes, sure.

Q. And you were close to a whole lot of other people and told them what they would have to gain by your handling it, who for one reason or another haven't adopted your views but have gone on and handled it through the brokers, haven't they?

A. Yes. Of course, it is a perfectly free country. A man can patronize me or somebody in New York or wherever he pleases.

Q. You said just now that the reason they didn't avail themselves of your services or the services of a person like you was that they didn't know. I am putting it to you now that people like yourself spend their lives making them know that they ought to patronize you instead of these brokers, don't they?

A. You would be surprised, Mr. Christian, how little residents of Virginia solicit such accounts as you have mentioned because they find that business by those companies is not placed entirely on the merits of the proposition but largely through personal associations of directors and offi-

cers who want the commission to go to some designated relative or friend.

Q. How do these agents find out that that is so? Don't they find it out by going and soliciting these nonresidents of Virginia?

[fol. 516] A. They do in some cases and others they just give up as hopeless.

Q. Don't they find it out by getting on the train and going out of Virginia to the home offices of these non-Virginia companies and try to persuade those people to put their business through Virginia agents and get rebuffed? Isn't that the way they find it out?

A. Yes, they find it out that way but the Virginia agent is not always rebuffed. He doesn't always get the business straight to him but in many cases they direct their broker to place the Virginia business with this man, knowing that the commission will be divided.

Q. And you don't need the help of this law to get the commission divided in those cases, do you?

A. Well, no, we don't need the law to make a man give us business. This law doesn't make him give us business. It simply gives us a part of the commission for services rendered.

Q. Mr. Tabb, I want to ask you this question, which is a departure from what we have been discussing: In some of your discussions with Mr. Staples this morning you spoke of your custom in connection with handling insurance in association with brokers who were non-residents and spoke of your custom in countersigning to carefully look at the policy and to do this and to do that. Am I to understand that in addition to cases where brokers associate you with them in casualty and surety business and get you to take [fol. 517] an active part with them and receive a substantial part of the business or where assureds have caused the broker, by their directions to do that, you have been, throughout the years, furnishing these countersignatures and other services at the request of casualty and surety companies or did you mean to discuss your custom with reference to fire business? Is that what you have been doing all of these years?

A. I had particular reference to fire business.

Q. And where you have been speaking about your custom in these countersignature transactions, you have been

talking about the fire insurance business and not the casualty and surety?

A. Yes, sir, because it hasn't been the rule for casualty policies to be sent to a local commission Virginia agent for countersignature. The new law changes that.

Q. I got the impression from something you said that you thought if T. Garnett Tabb countersigned a contract covering in Virginia and produced outside of Virginia that in addition to the responsibility that might rest on the company for having that policy illegal in some way, there was a responsibility that might rest on T. Garnett Tabb if it was illegal in some way and might endanger his license?

A. Yes, sir.

Q. I see the impression, however, that you got that if Mr. Lewis Adair or Mr. Osborn or Mr. MacNeil countersigned that policy no responsibility would be put on him and [fol. 518] that his license wouldn't be endangered, however illegal the contract was; is that what you intended me to infer?

A. I was sufficiently familiar with what the State Insurance Department might consider is the difference between the license of a branch office manager and the license of a Virginia commission agent. To answer your question fully, I think that whatever be the penalty to the branch office manager, the company would bear it, whereas the independent commission agent would stand on his own.

Q. Don't you know that until June, 1938, in all the years you have been in the insurance business in Virginia, these three gentlemen I have mentioned have had precisely the same kind of license that you have had?

A. Yes, sir. I knew that their license was the same form of license but just what construction the State Insurance Department would apply to an act by a company manager and a local agent is, in my opinion, one that I cannot answer and I think would be different.

Q. Do you know of any reason why one person licensed in the same manner that another person is licensed should be held to a different degree of accountability for his acts under his license than the other person is held to?

A. Yes, sir. While the law provides the issue of the same character of license, the difference in the duties of the two persons is well known by the Insurance Department [fol. 519] and the Corporation Commission and I think

would call for different treatment in event of an act committed by one or the other.

Q. Let us take that part of rebating, for instance. You think that a salaried man might permissibly rebate, even though a non-salaried man might not permissibly rebate? Is that the idea?

A. No, sir.

Q. Let us take discrimination. Do you think a salaried man might permissibly discriminate, even though a non-salaried man would be in trouble from discriminating?

Q. Do you think there is any difference between their relative rights to discriminate?

A. I think if the salaried manager discriminates the penalty would be applied to the company either directly or indirectly, whereas the penalty applied to a commission insurance agent would be borne by him, personally, entirely.

Q. Some of these penalties are penalties of imprisonment. Your idea is that a penalty of imprisonment would be imposed upon some person other than the salaried agent who incurred that penalty because he is a salaried man; is that right?

A. I am not sufficiently familiar with the law on that, but, of course, I wouldn't think that there would be any difference in regard to imprisonment.

Q. Suppose there is a law that specifies that a policy shall be in a particular form. Is it your idea that if you sign a policy that is in an illegal form you incur some greater [fol. 520] risk under the Virginia statutes than if you were drawing a salary as an agent when you signed that policy on an illegal form.

A. My idea is that if I signed it I am personally responsible, so far as fine and revocation of my license, and so forth, but if a salaried manager of an insurance company did it I think that the penalty would be borne by his company and if his license was revoked he would be transferred to some other territory and he would, therefore, suffer no real personal loss.

Q. Couldn't you have the same agreement to protect you for the doing of illegal acts that Mr. Osborn might have to protect him for the doing of illegal acts if you and the company for whom you were doing the acts made this same agreement that Mr. Osborn was going to make with reference to his illegal acts?

A. I don't think so. I don't think any company would agree with a local agent on commissions to go as far as with their own employees.

Q. I gathered that when you countersign a contract of insurance for a casualty or surety company, pursuant to the stipulation of the contract that it shall not be binding upon the company until it is signed by the duly authorized representative of the company, you thought that when you signed that contract you weren't signing it as a representative of the company; isn't that correct?

A. No, sir, I am signing it in a dual capacity, both as representative of the company to conform with requirements [fol. 521] of the policy contract and the Virginia law and also, further, to testify to its correctness in every respect, both for the protection of the policyholder and the company.

Q. By what legal processes did you reach the conclusion that Mr. Osborn isn't doing that when he countersigns that contract if you are doing it?

A. Well, the answer, Mr. Christian, is this, and this doesn't refer any more to Mr. Osborn than it does to Mr. MacNeil or any other manager. He is under the absolute control and instructions of his company from whom he draws his salary and has little or no voice in the relations between the policyholder and the company, whereas an agent is an independent person who often tells the company something that he wants done before he will countersign it and in many cases gets that change made, whereas a company-paid man necessarily feels a delicacy in doing that and I don't think hardly ever does it because he just accepts what his company tells him just like your clerk out here would accept, without question, something you might tell him to do, although he might in his inner conscienceness disagree with the propriety of it entirely. In other words, the insurance agent is a free agent, whereas a company manager is a salaried employee of the corporation from whom he receives a salary.

Q. Is it your idea that a clerk in Greentree's store who works on a commission basis is like you are, whereas a clerk who works in Greentree's store on a salary basis is like Mr. [fol. 522] Osborn?

A. No, sir, the distinction is widely different. A clerk in Greentree's store on a commission basis, in my judgment, works much harder than a salaried employee and that

is about the only difference between a salaried man in Greentree's store and a commission man.

Q. What difference is there between you and Mr. Osborn except that you work on a commission just like the commission clerk in Greentree's store and he works for a salary like a salaried clerk in Greentree's store.

A. The difference is as wide as the poles. I am an entirely free agent and own my business, whereas the branch manager has no interest in the business. If he dies he has nothing to leave. If an agent dies his business is just as much his as the residence in which he lives.

Q. If the clerk in Greentree's store who works on a commission basis dies, his good will is inheritable or assignable by his administrator or his wife or his son or his daughter just like yours is, isn't it?

A. I wouldn't say he had any good will to assign because the purchase of clothes is an independent proposition and doesn't run from year to year like insurance policies and a business you can build up.

Q. You say you own your business. Does the Travelers Insurance Company have anything to do with whether you will continue through the years putting contracts with it? [fol. 523] A. No, sir, I can resign tomorrow and take every dollar of premiums in the Travelers that I have on my books and they have no interest whatever and have so declared over their signature.

Q. And they can discharge you tomorrow and prevent your selling their contracts any more, can't they?

A. They can but they can't renew any of my contracts.

Q. But that is not the proposition. The proposition is whether you control as your business the right to act as the agent of the Travelers Insurance Company. That is what you have been doing, isn't it?

A. Yes, but that doesn't concern at all the ownership of the business. The business is just as valuable in another company as it is in the Travelers.

Q. Don't you see in the newspapers every day where a man who has been working for O. H. Berry & Company will advertise that he has left O. H. Berry & Company and gone to Miller & Rhoads, with the idea of taking custom there?

A. Certainly.

Q. You don't claim to do any more than he can do in that regard, do you?

A. Yes, sir, many, many times more than he can do because my association with my policyholders is an entirely different association from a merchant selling goods.

Q. You still stick it out. I understand it, that when you sign a contract for the Travelers Insurance Company there [fol. 524] is some kind of responsibility that you incur to the assured that Mr. Channing F. MacNeil, the branch manager of a company here in Richmond, does not assume to the assured when he signs an identical contract for that identical company; is that correct?

A. Yes, sir.

Q. And you say that that is so even though the assured is a resident of another state who doesn't know that there is such a person as Tabb and doesn't know whether MacNeil, or Tabb, either or both, are salaried or commissioned people, and who wouldn't know you if he met you on the street and wanted to have nothing to do with you and has asked you to do nothing for him; is that correct?

A. Yes, I think, Mr. Christian, the whole difference would come in in the event of a claim or a difference between the policyholder and the company issuing the policy. He would then very quickly find out who Tabb was and his responsibility and would doubtless call on me for service and I think he would have a perfect right to do so whether he liked me or didn't like me.

Q. And you think there is something inherent in your individuality which gives him some kind of a call on you that he wouldn't have on Mr. MacNeil, notwithstanding he never heard of either one of you before?

A. I would not say it is a case of personality whatever. It is a question of independent agency as compared to a salaried company employee.

[fol. 525] Q. Your only relationship with him has been that you have written your name on a contract that he bought from the Travelers Insurance Company. MacNeil's only relationship with him is that he signed his name on a contract that the assured bought from the Travelers Insurance Company. You assert here on the record that the mere fact that you happened, without that assured's knowledge, to be a commission man and MacNeil, without the assured's knowledge, happens to be a salaried man, that creates some difference between the rights and causes of action which might exist against you from the rights and causes of action

that might exist against Mr. MacNeil? Is that the proposition?

A. I do so assert on the basis, not of whether he knows when he gets the policy any difference between the branch manager and the Virginia agent, but the facts are not changed by his ignorance.

Q. What is the writing or the verbal expression that you have given him, when you sign your name on that policy, that differs from the writing or verbal expression of obligation which MacNeil has given him? Where does that right against you or that duty upon you arise when you do precisely what MacNeil does and the man knows nothing of either of you?

A. The difference arises from the different powers of the two persons signing the contract. The branch manager's powers are practically nil because he signs on behalf of his company and adds, in my humble judgment, nothing to the policy. The local resident agent, on the contrary, signs in [fol. 526] his independent capacity as an insurance agent and his duties, obligations, and powers are vastly different.

Q. Suppose that an assured placed that contract with a broker in Maryland or in West Virginia and all you did was to authenticate the policy for the company; you still say that you are in a different category from Mr. MacNeil?

A. Yes, sir, very different.

Q. Speaking of this law, and without waiving the objections which I have made to the testimony about this agents' Association and the introduction of its resolutions, do you think that the requirement of that resolution will have the effect on some agents of making it seem to them in their interest to get out of the Association so that they will be relieved of the burden of contacting assureds and incurring the hostility of the producing agent or broker as a result of forming contacts with his customers as required by the resolution?

A. I think I could only answer that from my personal attitude because, of course, I have no means of judging what the other insurance agents might conclude. I would say though, it seems to me in their own interest they would prefer to live up to the resolution because I believe it will make for an increase in their business, better relations with the broker, if conscientiously lived up to as intended by the resolution, and would hold business for their respective companies when the service is rendered that now, under other condi-

[fol. 527] tions, is constantly changing between different agents and different companies. I think it would tend to stabilize the business in the hands of an agent who gave the service contemplated in the resolution.

Q. Is it your thought then that if I were a New York or Baltimore producing agent or broker and I had the election of getting a Virginia countersignature on my Virginia business from a party like Mr. Tabb who I knew, obedient to this resolution, was going to contact my assured or to get my Virginia countersignature from a gentleman outside of the Association and who was not obligated to contact my assured, that I would prefer having Mr. Tabb do it and contact my assured rather than have the other man do it who wouldn't contact my assured? Is that your point?

A. No, that is not my exact point. I think a broker of standing outside of Virginia would feel safer in the hands of an established agent, living under the ethics of the Virginia Association, than to trust his interests to some agent who resigned from the Association in order to incur the favor of non-resident agents or get more business than he could get living up to the ethics of our profession.

Q. Supposing that the ground of his resignation was the ethical ground that your Association required him to do the unethical act of contacting his assured. Do you think it would make me think less of him because he got out of an Association that required of him what he thought to be an unethical act?

[fol. 528] A. I think Mr. Christian will agree that ethics change from time to time and mean, in my opinion, the practice of the accepted authorities and agents in any state. What were ethics fifty years ago are not ethics today and in many cases what are high ethics today in every profession would have been looked down upon fifty years ago.

Q. What were ethics for the members of the Virginia Association on February 12th had ceased to be ethics on February 13th when it passed this resolution, hadn't they?

A. That might be true but, as I just said, ethics are what an association adopts. I imagine that the ethics of the Bar are changed when the American Bar Association passes an edict to change your ethics. You adopt the new code and that is what we do in the insurance business.

Q. I simply use the American Bar as an example but I think I could go further. I don't believe that the National Association of Insurance Agents would criticize this resolu-

tion one iota. In fact, I would call your attention to the fact that the General Secretary of the National Association approved the resolution and is thoroughly familiar with it.

Q. How do you know he approved it?

A. I saw him read it in my presence, and I am satisfied that he approved it. He did not say he didn't and I assumed that he approved it because he passed it to me to read.

[fol. 529] Q. Do insurance brokers belong to the National Association of Insurance Agents?

A. Yes, sir, they do.

Q. I understand then you would have the Court believe that as members of that Association they would concur as you think, in this resolution of the Virginia agents' Association?

A. I don't know that all of them would concur but I believe that the leading ones who have a high conception of the profession of insurance would agree to it and I think it is like many other things; it is subject to test to see if it stands the acid test of practice and good ethics and, like any other ethical ruling, is subject to modification or extension if experience shows that that is necessary.

Q. You spoke yesterday about your efforts to insure safety. Are you aware whether or not there are laws in the State of Virginia under the administration of the Motor Vehicle Commissioner that are directed toward safety in the operation of motor vehicles and in the equipment of motor vehicles?

A. Yes, sir.

Q. Are you aware that there is a full time staff, including the Motor Vehicle Commissioner and his deputies and the State Police force, and so on, that is busy making inspections and observing traffic all the time for safety purposes?

A. I think that that bureau is probably very much undermanned, if we citizens of Virginia expect to look to them entirely for safety measures.

[fol. 530] Q. Do you think that the efforts of yourself and your colleagues are greatly helpful to that department?

A. We not only think so but we know it. We have cut accidents thirty to fifty per cent on fleets in the City of Richmond and it has been acknowledged by the owners of those fleets that our safety measures caused that result.

Q. When you speak of "our", are you talking about the agents or the companies?

A. The agents with the companies perform that service.

Q. Are you aware of the fact that the Code of Virginia sets up a Department of Labor and a Commissioner of Labor and a Safety Code Commission and closely regulates safety matters in industrial establishments and pretends to supervise those matters?

A. Yes, I know that such exists but I don't believe that the citizenry as a whole thinks it is sufficient. For example, the Richmond Community Fund pays a substantial amount annually for the maintenance of the National Safety Council which has as its particular function the prevention of accidents in the City of Richmond.

Q. Have you ever studied the safety provisions of the Motor Vehicle Code and the Motor Vehicle Carriers Act and the Protection of Employees Acts of Virginia?

A. No, sir.

Q. You are not prepared to discuss with me the efficacy of those measures?

A. Yes, from actual observation and practice I have good [fol. 531] ground to discuss it with you but as to the printed regulations, I have not.

Q. Were you aware, until I told you of it, that the Commissioner of Labor had any responsibilities for safety in this state of employees?

A. I never took much cognizance of it because I have never personally seen any results from it.

Q. You don't know the provisions of the laws which he is directed to enforce?

A. No, sir, I am not an authority on that law.

Q. Do you know about the legislation in Virginia with respect to the Department of Mines and the regulation of labor in mines?

A. In a very moderate sense, yes, because I, for some years, wrote employer's liability insurance on mine risks.

Q. But you think you can assist in the safety of operation of mines?

A. Yes, I do think so, decidedly.

Q. What about the Workmen's Compensation Act? You are aware, I suppose, that has many provisions in it designed to promote the safety of employees, do you not?

A. Absolutely, but one more help is very useful and owners of those plants appreciate the service rendered by agents and insurance companies in practical furtherance of that safety condition. They feel that they pay something

for it and we, as agents, think they are entitled to receive our individual and continuous attention to safety measures.

[fol. 532] Q. Can you point out the contents of any of the safety provisions of the protection of employees laws of the state or the workmen's compensation laws of the state and call my attention to any of them?

A. I think there are certain resolutions as to the inspection of boilers and safeguarding the machinery but my knowledge is more general than specific.

Q. Are you aware that the unions have skilled employees around the state who put a great deal of their time and energy and effort into this safety program of which we have been speaking?

A. From observation and experience, Mr. Christian, I don't think that those measures have filled the entire bill.

Q. I didn't ask you whether they have filled the entire bill. I asked you if you were aware that those organizations greatly stress the safety problem and seek to make employers provide more safe appliances and methods? Are you aware of that or not?

A. I am aware of it in rather a vague way because in our dealings on safety measures we don't take into consideration any safety measures that might exist in a plant. We use our own safety engineers and our own arguments for compliance with our suggestions, regardless of any Act or law that might exist.

Q. You have reference to the company engineers, I suppose, rather than the agent's engineers?

A. Some agents have their own engineers.

[fol. 533] Q. What percentage of agents in the State of Virginia?

A. I would say very small. I was going to say that that is small but that is one of the services offered by insurance companies on which they make a special appeal to get an agent to represent them. That is one of the services that we agents are given in order to justify representation of an outstanding insurance company.

Q. I am told that in your testimony you have referred to the National Safety Council. Do you recall doing that?

A. No, I said this local one, Richmond Safety Council, paid for by the Richmond Community Fund.

Q. I believe you were the first President of the Insurance Exchange of Richmond, Incorporated, when it became an incorporated organization, were you not?

A. Yes, sir.

Q. It has been rather a mystery by your testimony as to what has caused the fire companies to procure Virginia countersignatures on fire policies, covering in Virginia though produced outside of Virginia, from commission agents. Having reference to the existence of this exchange and also to the existence of its constitution and by-laws and having reference to the Southeastern Underwriters Association and its constitution and by-laws, are you enabled to throw any light for the Court on the reason why the fire companies follow that practice?

A. The only explanation I would have of it is that it has demonstrated to the companies that it was the best way to handle their business.

[fol. 534] Q. And that demonstration was made two or three generations ago, wasn't it?

A. I think it has been continuously made ever since it started, up to the present minute.

Q. But that practice has existed for several generations of insurance agents?

A. I understand it has. I don't know just when it started.

Q. Can't you say here on this record whether the rules and regulations of the Board from time immemorial here in Richmond and the rules and regulations of the Southeastern Underwriters Association since it was organized have required those countersignatures to be given by these commission agents?

A. I am not familiar with the requirements of the Southeastern Underwriters Association.

Q. Limit yourself then to the requirements of this local Board?

A. But I would have to introduce into the testimony the by-laws and constitution of the Insurance Exchange of Richmond to answer you fully. It has been such an immemorial practice that I don't know that our by-laws have any very distinct bearing on it.

Q. You know your by-laws have a bearing on whether you shall represent Board companies or non-Board companies, don't you?

A. Yes, they require us to represent Board companies.

Q. What is the difference between a Board fire company and a non-Board fire company?

[fol. 535] A. My opinion is that a Board company is a member in full standing of what is known as the Southeastern Tariff Association which is composed of about 200 stock fire insurance companies, both American and foreign, and they agree to live up to the regulations of that Board. A non-Board company is one that is not a member of said Association, and, therefore, is not expected to live up to their rules and regulations.

Q. Having reference to the thirty or forty or fifty percent of the leading stock fire insurance companies of the country, is it fair to say, generally speaking, that substantially all of them are Board companies?

A. Yes, I think the great majority of companies operating in Virginia are members of the Southeastern Underwriters Association.

Q. Coming down to your local Board here, this thing of which you were President, please say to what extent the fire agents in Richmond are members of that organization?

A. I have no up-to-date figures but I think about two-thirds of the agents domiciled in Richmond as insurance agents are members of our local exchange. A great number of non-members are men with other occupations who have insurance as simply a side line.

Q. Substantially all of the people who are whole time insurance people are in your Board?

A. Yes.

Q. Please explain to the Court whether your local Board has what is known as a non-intercourse rule?

A. Yes, sir, they have.

[fol. 536] Q. Tell the Court what is the non-intercourse rule?

A. Well, simply the non-intercourse rule prevents members of the insurance exchange of Richmond from transacting fire insurance and other lines of business with insurance agents who are not members of the local insurance exchange.

Q. Under that rule, in its full implication, is it not also prohibited to members of your local Board that they represent any non-Board company?

A. You mean a non-Board company is any company not a member of the Southeastern Underwriters Association?

A. Yes.

A. Yes, sir, I think we do prohibit handling of business with such companies.

Q. Is it not also a fact that under the regulations of this

local Board in Richmond no branch office may accept any business within the territory of Richmond and vicinity but, instead, it is all required to go to the local agent of the fire company maintaining the branch office?

A. Yes, with the exception of two branch offices here, the Travelers and the Ætna, who have solicitors in their own offices to whom they can give any business they desire.

Q. You speak of those gentlemen as solicitors. In fact, they are what is known as office agents under the national rule, aren't they?

A. Correct.

Q. And they are just as much a Virginia resident agent as you are?

[fol. 537] A. Yes.

Q. So that there is no exception to the rule in favor of Ætna and Travelers or anybody else that a branch office may not accept business, is there? That doesn't constitute an exception, does it?

A. When you say the branch office cannot, the branch office as such cannot, but these so-called branch office agents can accept business.

Q. And they are Virginia resident commission agents just like you?

A. They are but with a different standing as far as the insurance business is concerned. They are what we call solicitors.

Q. Who are "we"?

A. The insurance exchange.

Q. Do you mean to tell me that Mr. H. E. Woodward is what is fairly known as a solicitor or Mr. Maurice Tyler?

A. Yes, sir, they are known as solicitors and not agents of the Travelers Fire Insurance Company because our rules require that a company can have only one agent and I happen to be it and the exception is made that branch offices of the Ætna and the Travelers can also write fire insurance for those companies through their branch office. I hope I have made the distinction clear.

Q. Am I right that no member of your local Board is permitted under your by-laws to receive less than ten percent [fol. 538] for his own benefit when countersigning or otherwise associated in connection with a risk either with another Virginia agent or a non-resident agent.

A. Yes, that is the rule of the Richmond Insurance Exchange.

Q. Let me ask you this question: Does the Norfolk insurance community have a local Board in Norfolk?

A. Yes, sir.

Q. Under their rules their agents are regulated substantially as the Richmond agents are by the rules of the Richmond Exchange, aren't they?

A. When you say substantially, I would say that if you mean in most parts I would agree, yes, but my understanding, while I have never read the Norfolk regulations and by-laws, is that they have several privileges that we do not give our members.

Q. One of their requirements is that they have got to get this same ten percent on fire business that your rules require you to get, isn't it?

A. I think so but I don't know that.

Q. Don't you know that if you produce any fire business in Richmond you have to send it to Norfolk and pay somebody there ten percent to countersign it?

A. Yes, sir, and they are satisfied with it but whether it is a rule of their Association or not, I don't know.

Q. You know over the country that these Boards pretty much all have that rule, don't you?

A. Yes, I think they do.

[fol. 539] Q. To further bring this matter before the Court in its true light then, would it be fair for me to say that what are known as the Board agents throughout Virginia and elsewhere in the country must exact that ten percent on penalty of being thrown out of their local Board if they don't exact it?

A. Well, the penalties are right various under our by-laws.

Q. I don't mean that there isn't a difference between first offense and second offense and that they wouldn't possibly give you a criticism or censure first before they expel you, but I am asking you to inform the Court if, as a practical matter, it is not generally understood that if a man goes along habitually taking less than ten percent for countersigning this fire busines-, covering in his locality, he is going to get thrown out of the Board and is going to get ostracized? Isn't that a fair statement, generally speaking?

A. I don't think it is quite a full and fair statement because I understand in several points in Virginia men who are members do accept less commission.

Q. Who are you talking about? Mr. Charlie Lunsford?

A. Yes.

Q. Are you talking about Mr. John Yancey?

A. I don't know about Yancey.

Q. Is Mr. Charlie Lunsford a member of a Board that requires him to receive ten per cent and retain it?

[fol. 540] A. I am not sure about that because again I never have read the rules of the Roanoke Association.

Q. It is possible that the rules of the Roanoke Association might give him a right to retain only seven and one-half percent?

A. Perfectly possible.

Q. It is possible that Mr. Yancey in Harrisonburg isn't a member of any local Board?

A. Perfectly possible.

Q. Do you not also think it would be fair to say that the members of this Southeastern Underwriters Association, that is to say, the Board companies, are obligated to cooperate with these local Boards, such as the Richmond and Norfolk ones, and to conform to their rules and regulations? Isn't that your understanding?

A. Yes, I think they fairly approve of our rules in that respect.

Q. But it is your general understanding that any member of that Underwriters Association is supposed to conform to the requirements of these local Board rules, is it not?

A. Yes, sir, and I think they have found it much to their advantage to do so.

Q. Isn't it further true that a member agent of one of these local Boards couldn't continue to represent a company which had been formally declared by the Board not to conform to these rules we are talking about?

[fol. 541] A. I don't know, but my general impression is that those rules have been broken very often by companies but I don't make any accusation because I have no real facts on which to base such a statement which would be probably a serious accusation. The companies don't have anything to do with our rules and regulations. We are independent business men and we conduct the business of our exchange, in our own judgment, without reference to the companies.

Q. Am I right in my understanding that as far as the fire insurance business goes every benefit which you think this law is going to give anybody in respect of the casualty and

surety business is already being received without the benefit of this law?

A. No, I think that the benefits of this law will also redound to the fire insurance business by the additional care and attention and service the agents can give and especially under the resolution we have now adopted in our Association which will take in fire as well as casualty and surety. In other words, the agent will appreciate that his services are more valuable and that he will be compensated for a larger degree of service.

Q. I don't think we altogether understand each other. Let me put it this way: So far as the fire insurance business is concerned and as far as your knowledge extends, have not the Board companies, prior to the enactment of this law, been doing all that this law requires of them?

A. The Board companies as such, you mean?

[fol. 542] Q. Yes.

A. Yes, I think the Board companies have been doing everything that this law requires.

Q. Am I right in thinking that this law has, as its prime purpose to make the casualty and surety companies conform to what the fire companies have heretofore been doing under their rules and regulations and the rules and regulations of these local Boards?

A. I think it amounts to practically the same thing.

Q. Why is it that instead of getting a law to make these companies do that, you don't just make agreements with them to do it?

A. Well, I would say, in my humble judgment, the casualty companies, for some reason unknown to me, object to it and I don't know what brought about the adoption of the present methods of the fire companies in handling their business covering in Virginia and written by non-residents. I am not familiar with what led up to that agreement on the part of the companies and, therefore, I cannot tell you why it is necessary to have a law to conform all lines of insurance to the same regulations.

Q. Let me suggest that this fire custom grew up at a time when the fire companies did not have well developed, salaried, field plants in the various localities and, in consequence, were glad to avail themselves of the services of commission agents in connection with coverage in a given locality, produced outside of that locality. Does that seem [fol. 543] to you a plausible theory why in the older fire

insurance business this custom sprang up many years ago but did not come into the casualty and surety business in comparatively recent years when that business sprang up?

A. There might be some reasonableness in your assumption but if the fire companies found that the rules under which they operate were burdensome, they are the people that can change them because we agents are subject to cancellation of our contracts at any time and if they were not thoroughly satisfied with the division of commissions which has become an established custom, I am dead sure they would change it.

Q. But they would have to overcome the inertia of the existence of the rule and custom and overcome the friction of upsetting what had been in effect for forty or fifty or sixty years to do that, wouldn't they?

A. I think they would but we would have no recourse because we would have no companies to represent.

Q. You rather left the impression on me in your testimony in chief that in the fire business when you countersign policies you do not ordinarily prepare the policies, if the business has been produced by a non-resident agent or broker and covers in Virginia. Did you mean to leave that impression on me, speaking with particular reference to the Travelers Fire Insurance Company?

A. I would say, Mr. Christian, that we prepare about half of them and the other half are prepared by the company [fol. 544] and we check up, as I said, and report anything that we feel should be changed in the coverage.

Q. Is the other half the I. U. B, risks and F. I. A. risks that you don't prepare?

A. Yes, sir, we do not prepare those.

Q. So all those that you ever have any record of or keep any record of you have prepared yourself as a part of getting that ten percent, haven't you?

A. I said that about fifty percent would we prepare and about fifty percent the company prepared.

Q. And those you don't prepare you don't have any record of?

A. Oh, yes, we do. They send us a full copy of the policy they prepare and we keep it as a permanent record.

Q. I thought you said in the I. U. B. and F. I. A. cases you didn't get copies?

A. Oh, no, I did n't understand you referred to F. I. A. and I. U. B.

Q. Do you get copies of those?

A. No, sir, we do not.

Q. Do you say that leaving out entirely the I. U. B. and F. I. A. policies that you only prepare one-half of the other policies which you countersign and which are produced by somebody else outside of the state and come here for countersignature by you?

A. I would say that is approximately correct, that about half of them we write the whole policy and about half the [fol. 545] company sends us the policy with a copy for our records.

Q. And you say that is true as to the Travelers Fire Insurance policies?

A. Yes, I would judge so, of all companies in my office.

Q. I am not talking about all; I am talking about the Travelers Fire Insurance Company of which Mr. John A. Gibson upstairs is the branch manager?

A. Yes, sir.

Q. When you say that some of them come to you already prepared instead of you preparing them, don't you mean that the descriptive riders, especially of these big assureds, are printed outside of the state by the broker or the company, or whoever does do it, and that comes to you or do you mean that that is already pasted on the policy form and all the blanks in the policy form filled in before it comes to you?

A. Usually every bit of the policy is prepared, including those endorsements and forms and we sign them.

Q. You say that is so in as much as fifty percent of the cases?

A. I would say so, as a rough guess. That is a guess with no checking of my records.

Q. So to get this ten percent in the fire business, half the time you do have to, write the policy and the other half of the time, leaving out the I. U. B. and F. I. A., you don't have to write the policy; is that right?

A. I would say that was approximately correct.

Q. How many of these cases out of the whole number are I. U. B. and F. I. A. cases—twenty percent or ten percent or how much?

[fol. 546]. A. You mean in number or in volume of premiums?

Q. You can state it both ways.

A. I would say that the F. I. A. and I. U. B. contracts in

my particular office wouldn't be more than one in ten in the number of policies and probably twenty percent in the volume of premiums and that is another approximation because I haven't checked it up and am simply going by memory.

By Mr. Staples:

Q. I wish you would state what F. I. A. and I. U. B. mean.

A. The letters I. U. B. refer to the Interstate Underwriters Bureau and the letters F. I. A. to the Factory Insurance Association which are designed by the fire insurance companies to cover special risks usually located in many states.

By Mr. Christian:

Q. After you have written an insurance contract for the Travelers and you have delivered it and collect the premium and turn over to the company the balance of the premium left after deducting your commission, have you earned that commission that the company has paid you as far as your contract with it is concerned?

A. He has not because he agrees to refund to the company such portion of his commission as might be applicable to any return premium so that if the company cancels the risk for any reason they deem sufficient, the agent must refund the commission on the unearned portion of the premium. Therefore it follows that the agent has not earned his commission until the expiration of the policy.

[fol. 547] Q. Under the provisions of the contract, however, the agent has done all that he is required by the contract to do in order to earn either the commission deducted from the gross premium or such part of that commission as is not required to be restored because of a cancellation?

A. Yes, I would say that he has earned that portion of the commission which might apply from sday to day for the earned premium but I did not conceive that his entire duty under the policy is fulfilled when he delivers the policy and pays the premium to the company. His work in most instances has just begun.

Q. For a long number of years I have been getting annually from your agency a renewal certificate of a fidelity bond issued by the Fidelity and Casualty Company of New York on which you are one of the local agents, and I pay you

$12.50 each year and each year you send me the bill with the renewal certificate and in that bond the company guarantees to indemnity my organization, of which I am representative, from loss by virtue of the dishonesty of a certain employee of the corporation. In this supposititious case I never have had, as far as I can recall, any personal contact with any member of your organization. The only thing that has happened between us at all is each year you send me the renewal certificate and the bill for $12.50 and I approve the bill and tell the Treasurer to pay it and that is all that has taken place between us over this long period of years. I want you to explain to me in that case of what your services consist?

[fol. 548] A. Mr. Christian, you have cited a form of insurance that I am frank to say requires probably less service than any branch of the insurance business. However, service is rendered even under that $12.50 premium bond. We see that you are covered and the renewal delivered, regardless of whether you pay the premium or not. We pay the premium and protect you and in many cases don't get it at all and in many cases we don't get it for sixty days or ninety days. We see that your interests are protected and I deem that a service. We don't even trouble you with a visit to take up your valuable time.

Q. Suppose you moved up to Hot Springs and established yourself at the Homestead. Have I a legal right to expect you to come back here and attend to me?

A. Yes, sir, I think so.

Q. Where do I get that legal right. What has passed between you and me, consisting only of your delivery of that original bond and your annual delivery of a renewal certificate to me, to give me that legal right against you?

A. I think custom has established it. I can't go so far as to tell you that there is a legally enforceable contract to make me come back from Hot Springs to render some service under a bond, but I think it is implied that I will render you the service and I don't know but what I would go as far as to say I would be subject to some legal claim. I so consider it, Mr. Christian, in my profession.

Q. But you never told me anything in the way of an agreement to serve me, did you?

[fol. 549] A. I don't know. I don't remember when that bond was issued and I don't think I personally wrote it but

most policies that we write we either tell the insured, or imply it very strongly, that we are subject to any call for any service and sometimes it is right remote service and we feel we are bound to render it.

Q. Isn't that simply because you are intending to stay in the insurance business and want to expand your business and you want to get the renewal of the bond each year?

A. It is partially true. It is a selfish motive, I admit, to some extent but I object very strenuously to it being indicated that is purely selfish. I reiterate that we feel that we are professional men and have the same duty to a client that a doctor has to his patient.

Q. But the only contract I have sought, Mr. Tabb, or purported to have paid for in my supposititious case, is the contract of the Fidelity and Casualty Company that if this employee is dishonorable and his dishonor damages me it will indemnify me. That is the only contract I have bought, isn't it?

A. Well, I think there are certain implications there that you would feel, if you wanted to consult me about the employee and say, "I have got my doubts about him and what would you advise," and so forth, and we have that come up under bonds. I would feel obligated to give you that advice and service.

Q. I am rather frequently brought into transactions where I am required to procure what are known as removal bonds [fol. 550] in connection with the removal of suits from the State to the Federal Courts. I am not aware of any service I get in connection with such bonds after the agent has put his name on the bond. Can you explain to me where the service arises there other than in connection with the credit he gave me or my client for the payment of the premium?

A. Well, if I personally issued that bond I would feel under the same obligation for service that I would under your individual bond, but I must say that you are asking me questions about the surety business with which I am least familiar. I don't pose as a great writer of fidelity and surety business and my office may be at entire variance with the usual practice in that business. I am giving you what we do under all contracts in a general way.

A. There are some kinds of bonds that I am frank to say involve little or no service but they are the exception and do not prove the rule.

Q. I frequently have occasion to procure, in connection with the law practice, the signing of administrators' and executors' bonds and receivers' bonds and bonds of trustees in bankruptcy and of trustees in other matters than bankruptcy, attachment bonds, supersedeas bonds and after the transaction of the bond having been delivered and filed and becoming effective, I have never been made aware that the agent who signed the bond and got the commission had anything more to do with me. My object has been attained when I got him to put up that bond and I want you to explain to me where that service comes in?

[fol. 551] A. Well, there are degrees of service, some very little and some very great, and there is no way in which I can testify how much service would be required under any form of bond.

Q. Take one of those cases; take a supersedeas bond. Do you know what that is?

A. Generally, yes.

Q. What does the man who takes that bond and pays the man the premium have to do with what happens after that bond is filed in the Supreme Court of Appeals and has become effective? Isn't he done? I should say in nine cases out of ten he is and I don't know under what conditions he might not be, but I can imagine there might be cases that he would be called on but I don't think it is usual and I don't think it is probable.

Q. Suppose I have levied an attachment on somebody's goods and I call on you to give me a forthcoming bond in order to let me get my goods down. You give the bond and I get the goods down and take them and sell them. What service are you going to perform for me after I get that bond and take the goods down and sell them?

A. I think the service is very little that I would perform.

Q. It would really be more accurate to say there is no opportunity for service in the case of these various bonds?

A. That might be true too.

[fol. 552] Q. Within the past few days I had occasion to procure the issuance by a casualty and surety company of what is known as a lost instrument bond. The obligee of this bond was a Baltimore, Maryland, concern and I thought it was better that the bond be drawn in Baltimore so as to have its terms precisely what the obligee wanted. So I did get an agent of the obligee to arrange to have an application for the bond sent down here from Baltimore to me

and I had my person sign the application and mail it back up there with the premium. On the strength of having done that I am to get a duplicate debenture bond issued to replace the one that my person has lost. Having gotten that debenture bond, my person, I think, intends to negotiate the bond and get the purchase price and the transaction will be closed as far as my person is concerned. I want you to state what service I am going to get for my person from the agent who gets the commission on that bond which will be performed at a time after the effective date of the bond?

A. In answer to the foregoing question, I would say that I do not pose as an expert on various forms of bonds. My experience, however, over many years in writing bonds puts them in the same category as all other insurance contracts and service of the agent is often requested under every form of bond. I recently had a case somewhat similar to the form of bond mentioned by Mr. Christian where a large bond was [fol. 553] given by me to cover a lost instrument. This instrument was found after the death of the owner of the instrument which the bond was issued to cover and the agent was called in by the administrator to negotiate with the company for a basis of return premium and quite a lot of service was in order. I would say that, in my opinion, many claims under all forms of bonds require the service of the agent.

A. I cited a similar case which I handled and service was rendered many months after the issue of the bond. However, I will endeavor to further answer the question by stating that such a bond, in my judgment, might develop into a controversy or question as to coverage if a claim arose and the agent would be called on to act in behalf of the person for whose benefit the bond was issued.

By Mr. Christian:

Q. I want to ask if in the case in question the bond was applied for in January, 1937, and if your service consisted of having a talk with Mr. Watt on the morning of December 6, 1938, and of writing a letter to the company under date of December 7, 1938, asking it to make a premium refund and receiving and reading the letter from the company dated December 8, 1938, refusing to make a premium refund? Is that a fair statement of your service in that matter?

A. I would say it was.

Q. Continuing to discuss your bond case rather than mine, that is to say, the one where you tried to get the [fol. 554] premium back, would the principal in such a bond ordinarily call on the producing agent if he wanted to try to get his premium back or would he, instead of calling on the producing agent, call upon some other agent as a countersigning agent that he didn't know?

A. I think much would depend on the locale of the producing agent and the countersigning agent. I think if he called on the producing agent that agent would, in turn, call on the countersigning agent for assistance in rendering the service desired by the policyholder. My illustration of the bond issued by me and my efforts to secure a return premium illustrated the fact that we are called on for various classes of service, some of which are substantial and some of which necessarily do not get results, but it shows that an agent issuing a surety bond or any class of bond stands ready and is frequently called on for various services.

Q. Is it not a fact that this particular bond was delivered to an obligee in New York?

A. My recollection is the bond was delivered in Richmond to the person who owned the stock and I presume he delivered it to the Tobacco Company but our service did not concern the Tobacco Company in any way as they were not interested in any way in his request for our service.

Q. Where was the office of the Tobacco Company to which the bond was delivered?

[fol. 555] A. I don't actually know what became of the bond but the American Tobacco Company office, of course, is in New York.

Q. Assuming that in that transaction there was not only concerned the producing agent, Mr. Tabb, but also a countersigning agent in New York, do I understand from your answer to my question as to whether the producing agent would not be the one to perform the service in the course of which you indicated that it might be the producing agent or it might be the countersigning agent, that you think there is a reasonable possibility if there had been a countersigning agent in New York getting fifty percent of that commission that your friend and my friend, Mr. Preston Watt, whose office was within fifty yards of this building and within three hundred yards of your office, might in some circumstances have called on that countersigning agent in

New York to get back his premium instead of calling on you to do it? Is that what you want the Court to believe?

A. We did not construe this bond as a New York coverage but strictly as a Richmond, Virginia, transaction. I think any insured would call on both a countersigning agent and the agent of record for assistance in any matter concerned under the bond if he used all the sources of service available.

Q. I am coming back to ask you to further inform the Court on the point of whether you think there is a reasonable [fol. 556] possibility that if in that case there had been a countersigning agent Mr. Watt would have called on that man rather than you, but I notice you use the distinctive terms there—"Agent of record" and "countersigning agent"—I suppose drawing a distinction between yourself and the New York countersigner in the case we are talking about. Do you call yourself merely an agent of record in this transaction with Mr. Watt?

A. No sir, we were the entire and exclusive agent of record and were the only agents concerned in the transaction.

Q. What constitutes a man as the agent of record? That is terminology that has not thus far intruded itself into this case?

A. An agent of record is the agent responsible to the insurance company for the issue of the policy or bond.

Q. And how is the identity of that agent ascertained? By what fact?

A. By the fact that he produces the business and secures the policy or issues it himself and the term "agent of record" is simply one used in our business to designate the man who produces the business.

Q. That is all I am trying to get at, is whether you refer to the agent of record as the equivalent of the term that has heretofore been used—"producing agent"—and I understand you do?

A. Yes.

[fol. 557] Q. Not speaking in generalities but still talking about this bond case with Mr. Watt's office on the next corner and your office two corners below here, I understand you would have the Court believe that it would be reasonable to expect Mr. Watt, who had given that business to you, to call on the New York countersigner of the bond, if there had been one, rather than on you to help him get back

that premium if he thought he was entitled to get it back. Please state is that understanding correct that you want the Court to believe as the reasonable expectation of that?

A. I want the Court to understand that I think any man would be exceedingly lax in his duty if he did not try through both sources to secure action in behalf of his client.

Q. Is it a reasonable expectation that he would write to the New York countersigning agent before he called on you?

A. He might do it but I think that he would be unusual if he didn't call on them both together or certainly if one failed to call on the other because they are jointly interested and expect to render every possible service that their connection with the transaction would make possible.

Q. Whom do you think he would reasonably call on first, you or the New York countersigner?

A. I think he would reasonably call on the man to whom he had given the business as being under the greater obligation to him, but that wouldn't estop him from taking it up [fol. 558] with the countersigning agent and also with the company itself.

Q. Did you ever hear of Marsh & McLennan?

A. Yes, sir, I know them well.

Q. Who are they?

A. Possibly the largest and leading insurance brokerage corporation of the United States, located in New York City, with branch offices in many other cities.

Q. I will ask you do you not know that these big brokers around the country do maintain employees in the various localities where they are interested in coverage to perform inspection service, supplemental to the inspection service of the companies?

A. I don't think they do. I think they maintain an engineering department in New York and possibly in Chicago but I never heard of any broker maintaining any engineering service in Richmond, Virginia.

Q. We are discussing whether Marsh & McLennan performs, through its employees, inspection services in Virginia for its customers?

A. I think they would under certain conditions but from long and much experience with that particular brokerage firm, I know they look to me to perform that service on risks in which I am connected with them in the State of Virginia.

Q. Fire risks?

A. All forms of risks.

[fol. 559] Q. Are those fire risks in which you are connected with them or are you connected with them in other risks?

A. All forms of risks.

Q. I am asking you as a matter of fact are you connected with them in other risks?

A. Yes, sir, I stated all forms of insurance.

Q. Including casualty and surety?

A. Yes, sir. I don't know about surety. I am doubtful as to whether we handle any surety business for them.

Q. Is it business that is produced exclusively outside of the State of Virginia and by Marsh & McLennan alone that you are associated with them or is it business that is jointly produced by you and them and partly in Virginia?

A. I think we have business of both kinds with them.

Q. Casualty business produced exclusively outside of the State of Virginia in which they have associated you with them?

A. Some of it is produced in Virginia and some of it produced outside of Virginia.

Q. I asked you was any of it produced exclusively outside of Virginia by them?

A. Yes, sir.

Q. And it is casualty business?

A. Yes, sir, as well as fire.

Q. I am not asking you about fire so that is not responsive to my question. Did your relationship to which you have referred in your last answer of association with them arise before June 21, 1938, in respect of this particular business we are talking about?

[fol. 560] A. Yes, sir.

Q. Was it at their instance or at the instance of the assured that you were associated with them in that particular business about which we are talking?

A. Both, both classes.

Q. And they paid you fifty per cent of the commission?

A. The allowance of commission has varied. It is not always a fixed——

Q. Have they ever paid you as much as fifty per cent of the commission in a case where they voluntarily associated you in casualty business before this Act became effective?

A. They don't pay me any commission. I pay them and in some cases fifty per cent.

Q. You know that Marsh & McLennan are brokers, don't you?

A. Yes, sir.

Q. And you know that a broker doesn't get a general agent's commission, don't you, as a rule?

A. I don't know it as a fact because common report is that New York brokers get many favors, either above board or below board, that we agents in the territory have no means of knowing.

Q. Are you familiar with what are known as bankers' blanket bonds?

A. Yes, sir, to some extent.

Q. Do you know what is meant by Lloyds Associations?

A. If you mean Lloyds of London, I am fairly familiar with what that means.

Q. Is that an association admitted to Virginia?

[fol. 561] A. No, sir.

Q. Does it carry the coverage of any bankers' blanket bonds covering in Virginia, as far as you know?

A. Not to my actual knowledge but I understand that is the case.

Q. Does that concern have agents in Virginia?

A. I think not.

Q. Please state in the case of that important line of coverage what service is performed to the obligee by an agent or broker, not the producer?

A. I don't quite understand what the agent or broker would have to do with it. I am not quite clear on what you mean by that.

Q. The proposition is this: I understand from your answers to my questions that these so-called Lloyds of London people carry the risk which is covered by bankers' blanket bonds covering in Virginia, notwithstanding that this organization is not admitted to Virginia and has no agents in Virginia. On that premise I ask you what service is required to be furnished to the obligee in those bonds which is not capable of being performed by the non-resident producer of the bonds and I want you to tell the court that, if you will.

A. In my experience in trying to compete with Lloyds of London on bankers' blanket bonds, it has been rather freely admitted by the banks concerned that they are willing to do

without service in order to save the difference in the premium.

Q. I have had some contact with these bankers' blanket bonds and my recollection, which I state subject to correc-
[fol. 562] tion by you, is that they usually cover dishonesty of employees and the losses therefrom, and also cover cases where no dishonesty can be established, such as mysterious disappearance of securities. Having reference to that sort of bond, will you tell me what the service is that is performed by an agent in connection with that bond during the period of its life before any dishonesty occurs and before any securities are lost?

A. Again I repeat that I have issued so few bonds of this nature that I am not competent to say what service is required or might be required.

Q. Is the reason you have issued so few that you can't meet the competition of Lloyds of London?

A. Yes, sir, I would say that is absolutely the reason.

Q. And you hold yourself ready to issue one and service it for anybody who would give you one, don't you?

A. Not in Lloyds but in one of my own companies.

Q. That is what I mean, whether you know much about it or little about it.

A. I didn't say I knew little about it. I said that I don't know from actual practice how much service might be given before a claim arises or before some other contingency arises. If there is no complication or claim or anything under any insurance policy, I don't know what service the agent would render until such an occurrence did arise.

Q. I want to talk to you now about floater jewelry policies. Do I call that by a name that makes you know what I am talking about?

[fol. 563] A. There are two forms of coverage on jewelry and one is known as "all risks," to which I think you refer, and the other is risks outside of the domicile of the insured.

Q. What I want to get at is this: Supposititiously I have been one of these well-to-do people who has carried one of these policies for a good many years and I have a transaction every year with the agent in that he sends me a renewal policy and I send him the premium. I want to know what kind of service he ought to be giving me and, if you were my agent, I would be getting on my wife's fur coats and rings, and so on, that I am not getting now?

A. I don't know what service you are getting or not get-

ting but before we renew those policies in my office we either have a new appraisal made, because the values change from year to year, so that we will be prepared to pay your loss when it occurs and not question the amount of the loss, or——

Q. You say if you had been fortunate enough to be my agent in that transaction you would make me get the fur coats and rings each year and submit them to your appraisal?

A. No, sir, we don't appraise them. We have disinterested expert furriers to appraise furs and expert jewelers to appraise jewelry.

Q. And you claim that you would make me do that every year if you were carrying that risk for me?

A. No. I would ask you if you didn't think it would be wise to do it and would recommend that you do it because the value of diamonds, for instance, fluctuates widely.

Q. And you would get a new renewal commission every time that happened, would you?

[fol. 564] A. Yes, that form of policy is deemed a new policy each year.

Q. So you would be doing that as a part of service to get the renewal commission, wouldn't you?

A. Of course.

Q. That is what most of this service is, isn't it?

A. No, sir, it is to look after your interest and company's interest and see that the insurance is properly written and to stand ready to see that you receive a proper adjustment when you have a loss.

Q. You say it is a part of the producer's obligation to do that?

A. It is an implied obligation and certainly, if he is on his job, he renders that service without any request on the part of the policyholder.

Q. I have some knowledge also—and there is no doubt you have—of burglary policies.

Q. I have had this policy for some ten or fifteen years, Mr. Tabb, and I haven't had a loss. I want to know would you have been giving me a lot of service during that time, if you had been my agent, and, if you would, what would it consist of?

A. Well, of course, it is perfectly conceivable that this form of policy can involve a very minimum amount of serv-

ice but in renewing such policies in my office we usually call the attention of the insured to the advance in values and the accretions of a household which should be covered more adequately. I think this is service but it sometimes doesn't result in any change in the policy.

[fol. 565] Q. And if that service results in my taking the policy in a larger amount, then you get a larger commission than you would have gotten if I had kept the policy in the same amount, wouldn't you?

A. Certainly, and that is our business.

A. Let us go on to the health and accident business and getting down again to treat my case as a supposititious one, I have a policy with the Travelers on which I pay a premium of $200 per year and I suppose you know what kind of a policy that is. It is a health and accident policy and I reckon it is a fairly good sized one as those policies go, though I don't know. I carry another one on my son, an accident policy, which a Travelers' agent brokers with the Aetna.

Q. What would you have been doing for me all of these years when no claims have occurred to make those two contracts of greater value to me if you had been the producing agent of the two contracts?

A. There might be improvements in coverage coming out since the date of your policy, such as hospital reimbursements which probably might be added, and various conditions might arise that would justify the agent visiting you and ascertaining that there were changes in your conditions which would justify a change of the policy.

Q. Do you mean by that that he would come to me and tell me I didn't need that accident insurance and better not renew it?

A. There are conditions under which we have done that very thing but I can't answer your supposition unless I [fol. 566] go into imaginary field which would take me a long time to cover the ground.

Q. But ordinarily you favor any man who can pay a premium, without undue hardship on himself, protecting himself by health and accident insurance, don't you?

A. Based on his income and other conditions which sometimes change.

Q. You mean you might come up here and get me to tell you what my income is and discuss with me whether I could

really afford to pay this $200 a year? Is that the service you would give me?

A. Not a question of affording it so much, Mr. Christian, as not covering you for more than you earn. Those cases are not very numerous because we hope the man knows something about what he needs.

Q. You could get some information about whether I could afford to carry it from the fact that I might have difficulty in paying the premium notes when they fall due, couldn't you?

A. Well, that doesn't absolutely fix the insurable value of a man's time as covered by an accident and health policy. We also, as a matter of service, renew his policy and send it to him before he pays the premium. You might be out of the city for a week or two, covering the date of your expiration, and if we didn't cover you you might have an accident during that interim and lose the entire coverage. I deem this a very important service on the part of a reputable agent.

[fol. 567] Q. Keeping on with these cases, you are familiar with plate glass policies, aren't you?

A. Yes, sir.

Q. What service ought this supposititious person to be getting on these plate glass policies through the year and, when no loss occurs, the glass just stays in the window?

A. Well, of course, the agent has to see that the glass is measured and the rate applied but on this particular class of insurance there is a very small amount of service expected.

Q. About this public liability insurance line, are you familiar with that?

A. Yes, sir, I think I may fairly claim to have issued almost the first public liability coverage in Virginia in many lines.

Q. Will you say what sort of service, in the absence of claims arising or appearing to be impending, the owner of a theatre or merchandise store or hotel or bank gets from the producing agent of its public liability contract?

A. The agent tries to keep posted as to developments and extensions of the plant or hotel and it is often necessary to explain the necessity for extended coverages such as products liability and, in the case of an hotel, there is possible liability for their doorman handling cars of guests and, in the case of stores which take on the installation of mechanical de-

vices, the coverage has to be extended to take in that additional hazard. The ramifications of the public liability business are so great and changeable that an agent has opportunity to render very efficient service to the policyholder and to his company.

[fol. 568] Q. You spoke about the additional coverage that would be needed in the case of an extension of the plant. Do you mean if you add a wing on to the hotel or deepen the depth of the banking office?

A. Yes, and also changes in their business operations.

Q. You mean to say that if the bank has a public liability policy and it adds twenty feet to the depth of the bank that it won't have coverage as to what took place in that additional twenty feet unless it pays an additional premium and gets the policy changed?

A. Bank insurance is based on area and frontage of the premises and, therefore, if additional room is added the policy should be endorsed to take in that additional area and frontage, if there be any.

Q. And until that is done there would not be any liability for what took place in the additional area?

A. I don't think any reputable company would deny liability if an insured or agent overlooked endorsing the policy but the policy contract might be such that it could be strictly constructed to avoid liability if an accident occurred on the additional premises.

Q. And you say that is so of the Travelers' public liability contract?

A. Yes.

Q. You spoke of that as additional coverage. Would there be an additional premium and an additional commission when that additional coverage was placed?

[fol. 569] A. If the amount of premium amounted to a dollar, additional premium would be charged but if less than a dollar no additional would be charged because it wouldn't pay to put it through the books.

Q. What about products liability that you said you might call attention to the fact that an extension of coverage was needed to include products? Would there be an additional premium if you got the man to take that additional policy?

A. Yes, sir.

Q. You spoke about these doormen at the hotels. Do you mean that under the Travelers' public liability policy it

needs a special rider to cover public liability on account of acts of the doorman?

A. Involving a car, yes, sir.

Q. There is an additional premium for that?

A. Usually, yes, sir.

Q. And there would therefore usually be an additional commission that the agent would get?

A. Certainly, but that wouldn't lessen the service to the assured as the premium charge would be a very small item as compared to the possibility of a loss.

Q. But at least you would be getting a commission for writing that new policy?

A. Certainly.

Q. If I were a department store man and had a public liability policy covering my premises, but did not have one covering my products, and the company had paid you the commission as the producing agent on the policy covering my premises and you came up there and pointed out to me [fol. 570] that I ought to get another policy covering my products, and I did do it and the company paid you a commission for doing that, is my understanding correct that you think the work you did in connection with that products policy is a part of service on my premises policy?

A. Yes, because usually there is an extension of that coverage and it is all involved in the general coverage known as public liability.

Q. Tell me what element there is in the relationship between you and the owner of that department store who places with you, as the producing agent, the premises policy which would make you liable in law for a default in service if a suit should afterwards be brought against the owner on a cause of action based on products liability and you had not been up there and tried to get him to take out that products policy? Are you, according to your conception, in default to him because you didn't go up there and tell him he ought to have a products policy and, therefore, has he got a legal cause of action against you to indemnify him against the amount of the judgment that the plaintiff in that suit on the products liability gets against him?

A. I feel quite confident there would be no legal liability on the agent but I think he would feel very badly about his failure to properly go over the public liability policy and point out where it should be extended.

Q. In the same way, if I were running a department store and all I had in the way of casualty insurance was a public liability policy, if I got sued for anything in the way of a [fol. 571] casualty hazard and I didn't have a policy on it, you would feel that you had neglected an opportunity to make some money for yourself and you would also feel you had neglected an opportunity to help me by not bringing that up with me and selling it to me, wouldn't you?

A. Well, the agent handling a public liability coverage is supposed to cover the whole ground such as elevators, boilers, and everything that can produce a public liability claim. It is all wrapped up in duty to his client and to segregate it into different policy credits is not practical nor is it a part of my theory of service.

Q. Aren't there a great many people, however, Mr. Tabb, and also corporations that divide their casualty and surety business among several agents and brokers in whom they have confidence rather than giving it all to one and letting that person be a sort of general insurance counsel?

A. In the case of large assureds they usually have one broker or, in this state, an agent. Of course, they may divide their business among agents but they don't divide public liability, according to usual practice.

Q. Why is it they usually have one who is kind of a general insurance counsel who would, therefore, feel guilty if there was any defect in the protection, instead of having several?

A. Well, it simplifies their business and they like advice of someone that they give big business to on the theory that he can afford to call on them more frequently and liberally, [fol. 572] and an agent writing public liability insurance is supposed to be quite a high type of agent because it takes some knowledge of law and some knowledge of business conditions and many things that make this service I am talking about appreciated by owners of property and substantial business people.

Q. But you are getting a little bit away from my question. In a community like Richmond, for instance, there is more than one man who knows about law and what you call business conditions?

A. That is true.

Q. Why would he have to just go to one man? Why couldn't he have two or three to go to?

A. A matter of personal privilege and the ability of the agent in selling his personal services.

Q. So, getting back to the point of why you would feel culpable if I had the premises liability insurance and didn't have the products liability insurance, and even though there is no legal liability on you, you would feel you had sort of failed me if I had a suit brought against me on products liability, your idea is that every important assured has some one agent that he relies on to protect him in all his insurance matters?

A. Personally, I would feel that I had failed to give proper advice to my insured.

Q. (The question was repeated.)

A. No, I don't say that. I say the tendency is going in that direction, particularly on localized business where one man can keep in touch with it and in touch with the assured.

[fol. 573] Q. If an insured doesn't bow to that tendency and has three or four, is each of them to feel this sense of failure and culpability if any casualty occurs in connection with which that assured might have had insurance and doesn't have it and that it is their responsibility and fault and failure that he hasn't got it?

A. Yes, I think that everyone of them would have a reasonable feeling that he had failed to give him advice on which he could probably have gotten all of his business from his competitors.

Q. And, as I understand your argument in this case, all of these various countersigning agents that might have been countersigning these different policies, have got to feel that same feeling of culpability, have they?

A. No, I don't think the countersigning agent would feel quite the same culpability because his efforts, if made, to advise the owner of the business, or the insurance head, might not be received and he might be told that the owner wished to discuss the questions with the broker. It would, nevertheless, prove the value of the service of the local man if, through his suggestions, the policyholder was better protected.

Q. Suppose there were four or five different countersigning agents or thirty or forty in the different localities of coverage and they all told him different things, whose advice is he going to follow then?

A. If the advice is correct it can't differ and, of course, he has got to be the judge as to which of the thirty or forty agents advises him correctly.

[fol. 574] Q. Isn't it an actual fact and truth that when those agents come around and give him unsolicited advice about new protection he ought to have, what they are doing is trying to sell some insurance, isn't it? They are not trying to service something he already has? Isn't that the truth?

A. Mr. Christian, it is, of course, perfectly patent that insurance agents are in the business for profit and not as philanthropists but, in order to secure their maximum profit and their continual profit, service is the essence of the insurance business.

Q. As to these important assureds that service is usually provided by some one man, isn't it?

A. I would say the final crux of it is usually performed by one man but frequently more than one man is connected with the final result.

Q. And you think that if ten or twelve agents undertook to advise me independently about whether I needed a certain coverage or not, if they were all intelligent men their advice must all be the same, that there is no such thing as judgment in giving advice as to insurance matters?

A. I did not say that.

Q. I thought you said if there were thirty or forty agents and if they all knew what they were talking about their advice would be similar?

A. It would be somewhat similar but the human element enters into it and the way you put it and all the other facts connected with it might vary somewhat because if all of [fol. 575] us said the same thing you would be in an awful fix as to whom to pick out. I didn't mean to say that I thought thirty or forty men would give you the same advice on any subject.

Q. Going back to my department store case, if I am wrestling with the proposition of whether I should have a $20,000 and $200,000 public liability policy or a $10,000 and $100,000 public liability policy and I submit that to thirty or forty agents you say all of them are going to tell me the same thing?

A. No, I don't say that, not at all. Some might tell you you ought to have double your maximum and some might say you are wasting your money.

Q. You admit the propriety of my having some one agent like Mr. Tabb or Mr. Gibson on whose advice I rely about that rather than on the advice of miscellaneous countersigning agents who might be telling me something different, do you?

A. Well, I think for simplicity you would select one man but I think you would expect him to get all local advice that was possible, and assistance, especially if your business covered in many localities where one man, living in New York, can't possibly keep in close touch with the conditions of your business in forty or fifty different localities.

Q. In your examination the other day which has been transcribed by the reporter you said at the bottom of page 530, when Mr. Staples was examining you as to the service of the producing agent in connection with an automobile fleet risk covering exclusively in Virginia, so far as the garage places and principal use places of the cars are con- [fol. 576] cerned, but covering in many cities of the State of Virginia, this is the service he would perform and the way he would perform it: "It isn't necessary to have any local agent in other towns to countersign that contract or to have any reference to it in most cases, so the agent who writes that risk in Virginia usually does the whole job and goes to the towns, if there is any need for local service, and he might, if he incurred some purely local situation, call in some agent to help him but that very rarely arises in intrastate business." There is an implication that in such a case as that a Richmond agent, writing that business for a Richmond assured, might sometimes go to the towns where the cars are garaged. I ask you for what purposes he would go there?

A. He might go there in connection with a claim or there might be some doubt as to the exact character of cars on which the premium is based and he might go there to assist or even independently take up safety measures incident to the cars at that point.

Q. If there was doubt about the proper description of the cars, would it be better to resolve that doubt by looking at the bill of sale for the car and perhaps the Motor Vehicle certificate and the license and all the other documents that are at the home office or would it be better to get on a train or in an automobile and drive to another part of the state on the chance that you would catch the car out of use that day and could see it?

[fol. 577] A. I would say that you would certainly exhaust every means you could find to avoid making an expensive trip but frequently none of the sources you mentioned are entirely accurate.

Q. You say that it is frequently true that neither the bill of sale nor the state license nor the title certificate would contain an adequately accurate description of a car to enable the premium rate on the car to be determined?

A. The use of the car also frequently governs the rate and any restriction put on the car for rate purposes might not be to the insured's interest and the use of the car is very important as well as the exact type of car.

Q. (The question was read) Is that what you want the Court to believe?

A. I meant to state that these sources of information do not govern the use of the car necessarily and I have found that an examination of the car, with advices as to it from the assured as to its use, has accomplished a reduction in the premium.

Q. Why is it necessary, if you are writing a contract for me in Richmond and I am the owner of that car or the President of the company that owns it and I have here my executive assistants who govern the use of the car, why is it you can't get all that is necessary as to the use of that car from talking to me instead of going out in the country somewhere where neither I nor my executive assistants are [fol. 578] in order to find out how the car is used?

A. Well, I think both are conceivably necessary, but I can't see that it lessens your service whether you discuss it with the head office in Richmond or whether you take the trouble to go out and look at it. Both are services of the same kind and the insured is not interested in whether you spend money in his behalf or don't spend any money. The result is what he is after and in most cases you can get the information from headquarters and don't have to make any trip. I merely mention the possibility of a trip because the man controlling the insurance very often is in doubt as to just what change can be made in the use of his car or many other things that the agent might suggest. He might settle it right in his office and he might say, "You had better look this car up and tell us then what you think." It is all a form of service and I did not mean to tell the Court that traveling through the state is a usual or compulsory

part of the service given under an automobile insurance policy.

Q. I want to get this record accurate and be certain that I have it accurate. I understood from your testimony the other day which I read out of the record that there were occasions when you would need to go to the town to find out what kind of car it was. I understand that you retract that now, at least to this extent, that you admit it would be a most unusual case when you would have to use anything beside the bill of sale and the evidence in the possession of the persons at the home office of the assured to find out the kind of car it is?

[fol. 579] A. I would say that the great majority of cases don't require a trip to the actual scene of use of the car.

Q. I understood this morning, after you had admitted that it ordinarily wouldn't be necessary to go to the location of the garage or use of the car to find out what kind of a car it was, that you then indicated it might be necessary to go there to find out how it was used but in a later answer you have retracted that and have admitted that in most cases you could find out the use of the car from talking to the people at the home office who direct and govern its use; is that correct?

A. Yes, but I don't consider that I have retracted anything. I have enlarged it in an effort to put before the Court my conception of service under an automobile policy.

Q. You said, as I understood it, that another occasion when you might want to go to the town where the car is garaged and principally used would be when there was an accident and you would want to go there to find out something about the accident or to serve the assured in some way in connection with the accident. Will you tell me how often in the last month, say, you have had to go to a town as much as one hundred miles away from Richmond to investigate an accident in which a unit of an automobile fleet has been involved as to which you were the producing agent?

A. I don't recall having to go a single time.

Q. I used the period of one month. Can you tell me when you have done it in one year?

A. I don't recall that I have done it in one year unless [fol. 580] a question has arisen in connection with a claim settlement.

Q. Can you recall that you have made a trip to some town more than one hundred miles from Richmond to investigate an *an* accident or furnish accident service in connection with a fleet risk?

A. I can't recall accurately any trip of the kind because in most such cases we get the information over the telephone or from the assured and from our own claim men and this kind of claim service, requiring a trip, was mentioned more as a possibility and as a service we are prepared to render if the necessity arises.

Q. When you speak of "our own claim men," what your mean is the salaried claim people of the Travelers who are entirely independent of you and are in no way under your authority, don't you?

A. I don't think that statement is quite accurate. The company pays them for their services but recognizes the agent as being entitled to discuss with them all claims that come up and if opinions vary they largely listen to what we have to say in connection with the handling of the claim.

Q. I now ask you do you have any control over the time of Mr. Davison or any control over the amount of his salary or any control over the time or amount of salary of any of his subordinates?

A. None whatever.

Q. And you don't have any authority to employ or discharge claim people for the company?

[fol. 581] A. No, sir, none directly whatever.

Q. And he has no obligation to report to you or account to you for any of his actions, except the obligation of courtesy and that you and he are members of the same organization; you have got to live together and he values you as an extremely large producer and a helpful factor in his company just like you value him. It doesn't go beyond that, does it?

A. Yes, it does. He is instructed by the company, and they agree with me, to report all payments of claims to me and, under instructions from the company, he confers with my office on claims originating under policies issued through our office. This is not compulsory in the sense of referring every little claim to us for our approval but it is a matter of cooperation and keeping us posted on the handling of claims under our policies.

Q. The procedure is this, that you have a policy and a claim arises or is pending in the sense that an accident

occurs. You are required to file with him a claim form, aren't you?

A. We send to him a transcript of the policy showing him what is covered.

Q. And report the notice of claim?

A. And report the notice of claim. In some few cases we settle and receive reimbursement from him but that is not frequent or very usual.

Q. After you report the thing to him my understanding is that he and his adjusters go ahead and settle it and then when they make a payment, whether it is to the assured or whether it is to some third party, they let you know they [fol. 582] have paid Mr. Tom Smith $200; is that right?

A. Correct, but we go further than that. When we report a claim or afterwards have information on which we wish the claim not paid, we advise them and they confer with us before they make a payment.

Q. On page 530 of this transcript you said, "It is often necessary for the producing agent to examine the cars personally to see whether a pick-up truck rate would apply or a truck rate." Do you still insist that this is often necessary in the sense that it is often the fact that the bill of sale would fail to disclose that and that the title certificate and the license and the President of the company and the subordinate officials of the company at the home office would be unable to tell you that?

A. They would for accurate rating purposes because a pick-up truck carries a reduced rate only on condition that it does not make wholesale or retail deliveries and very frequently the insured changes the body of a truck after getting a license and does not report it, so that it is very important to look at the truck and form your own opinion and transmit it to the insured and in some cases I have had the use of the truck changed to eliminate wholesale and retail deliveries and give it to another truck so that he could get the lower rate on the pick-up truck.

Q. Don't you see though that your actually seeing the truck was not what enabled you to do that but what enabled [fol. 583] you to do that was the man told you how he was using the truck and you said to him, "Why not use it in a different way and you can get a better rate?"

A. I just recently insisted on seeing the truck because the average man, owning one or two or three trucks, doesn't know exactly what "pick-up truck" means.

Q. We are talking here about a risk that is a fleet policy covering in many Virginia cities. You say the average assured under a fleet risk, covering in Virginia cities, doesn't have persons at its home office who can answer your questions as to the extent that they affect the rating on that truck?

A. Yes, sir, I have never seen a corporation big enough yet to know much about the insurance business.

Q. They certainly are able to tell you whether they use the truck in making retail or wholesale deliveries if you ask them, aren't they?

A. That is a point of great discussion, Mr. Christian, as to what constitutes a retail or wholesale delivery.

Q. How can you tell from looking at the truck whether it is used to make one or the other? Haven't you got to see what the deliveries are?

A. By looking at the truck and its body and, knowing the commodity furnished by the insured, you can arrive at a pretty definite conclusion as to whether it can be possible to make wholesale or retail deliveries.

Q. And you do tell the Court that you often have to go around the state to different places and look at trucks to [fol. 584] find out what rate applies on them?

A. No, I did not state that at all. We would be very loath to make a trip of one hundred or two hundred miles to look at one car when the insured and the employees of the assured were in position to tell us all about it and we could put an embargo or rather a restricted endorsement on the policy and explain it to them and they would be satisfied with it.

Q. But you do say here on page 530, Mr. Tabb, or are recorded as having said that it is often necessary to examine the cars personally. Do you still stick to that?

A. Yes, but I didn't mean and I didn't think my answer meant that we made it a habit of going all over the state for that purpose. I had more reference to local fleets.

Q. We are not talking about a local fleet, Mr. Staples particularly said he was talking about a fleet that was garaged in many of the principal cities of Virginia.

Q. Let us make it that there were several cities. Do you want the Court to believe that when there are several cities that it is necessary for you to go around to those several cities and personally inspect those trucks in order to put the proper rates on them?

A. Not frequently because we get a lot of that information from our inspectors who go to these places, and if there is any doubt about the use of the truck or the kind of car, we try to get them to give us the information.

Q. Do you recall any case where you have had them go and find out that a car was rated wrong in one of those fleet policies?

[fol. 585] A. I don't recall that I have called on him in many years for that service, no.

Q. You said just now that the reason that you didn't have to go and personally inspect these cars to find out whether they were rated correctly was, to use your language, that "we have our inspectors do that?"

A. If I needed it.

Q. And now I understand that no such transaction has occurred, as far as you can recall, in many years? Is that correct?

A. Right, correct.

Q. Then getting back to my question of whether you spoke correctly yesterday when you said for the court's information that it is frequently necessary for you to personally examine these cars in order to get the correct rating, and having reference to your modification of that today in which you said you didn't have to personally do it because you got "our inspectors to do it," you now say, as I understand it, that in many years no such transaction has taken place; is that correct?

A. I thought my testimony, Mr. Christian, bore largely on local cars and not exclusively on fleets located at various cities in the state. We figure that large insureds know more about their risks and they have men who give us the information largely locally and we depend on that information. Where the car is readily accessible, without much expense or trouble, we personally look at it.

Q. You mean then if you called at my store here in Rich-
[fol. 586] mond and the car was sitting outside you would look at the car?

A. Of course, but if it wasn't outside the store we wouldn't abandon our examination. We would find out when it would be there and we would come back again and look at it. I had to do that in a recent case.

Q. And that was not a fleet case?

A. It was a case of three or four cars but not known as a fleet risk.

Q. And they were all cars that had their principal garaging and use here in Richmond?

A. Yes.

Q. Talking about these fleets, aren't there a good many fleets that are not susceptible of safety conference service and inspection service such as, for instance, fleets of traveling salesmen whose cars are more or less the pleasure type of vehicle and are garaged wherever the salesman happens to make his headquarters and are never brought together?

A. Under such cases it is more difficult to put in effect very effective safety measures but we have letters written by the executive officer of the corporation to such salesmen embodying our suggestions and giving them a warning in connection with their accident record. We accomplish the safety service in a slightly different way.

Q. By mail?

A. By mail and most salesmen are called into their headquarters at least once a year and we ask in many cases that we be allowed to address them and explain safety measures [fol. 587] and all when they are in their office.

Q. What headquarters are those salesmen called into as a rule?

A. Into the headquarters of their particular division. I don't believe that it would be practical for a company, operating in forty-eight states, to call its salesmen into its New York office. Usually the United States is divided into sections and in most cases into state divisions and those employees report to the Sales Manager for that particular division or state.

Q. Do you have any sales conferences around in the various states where your tobacco company customer's salesmen travel or do you have those conferences here in Richmond at the head office of the Tobacco Company?

A. We personally handle those in Richmond but very rarely go to remote points where we leave that work to the inspection and claim departments of the company.

Q. And when you spoke of "we" just now, you meant to have reference to the claim and inspection departments, didn't you?

A. I don't know in what sense.

Q. You said "We usually have safety meetings at the division headquarters."

A. We usually call them in for their expression of opinion

and any emphasis that they can give to our safety recommendation.

Q. Who are "we"—your agency?

A. We, as an agent. I have two partners.

Q. That is clear to me. Then you want the Court to [fol. 588] believe whenever these safety conferences are held, that it is the result of your having called these inspectors and claim people in and asking them to hold the conference?

A. It is due to both. Sometimes they make the suggestion and sometimes I make it and sometimes the insured makes it.

Q. As a matter of fact and of routine, those inspections are going on all the time at the instance of the company, aren't they?

A. Yes. A well managed company spends millions in its safety work.

Q. We are talking principally about the Travelers, since you are more familiar with that. It holds those safety conferences as a matter of routine whether you ask it to or not, doesn't it?

A. Yes, they do but we usually put some emphasis in it and they usually ask us what our opinion is and to please arrange for a meeting, realizing that the agent can get the executive officers, whereas an inspector or claim man rarely can do it.

Q. And that is because the producing agent has a contact with the executive officer who placed the insurance?

A. He not only has a contact but they look to him for advice and guidance on all matters affecting his insurance cost and his insurance coverage.

Q. And I understand also that you admit that the company has a regular routine of getting these drivers called into consultation for safety measures with its inspection [fol. 589] and claim department employees periodically, without regard to your request?

A. Yes, I think that it is usual for them to put into effect some system of safety work and we have it understood with them that such action shall be taken wherever they see an opportunity to serve the policyholder.

Q. You used the expression "we have it understood with them." Wouldn't it be more accurate if you would say it is a notorious fact that they do that?

A. Are you referring to the Travelers only?

Q. Yes.

A. Yes, we advise the policyholder of that superservice and we expect the company to render it which they agree with us they will do.

Q. You mean they hold themselves out to you as rendering it, don't you?

A. Yes, sir.

Q. And they hold themselves out to the public as rendering it?

A. Yes, sir.

Q. And you hold the company out to the public as rendering it?

A. I don't particularly hold it out to the public that the company renders it. I hold out to the public that under a policy I issue it is rendered, both by me and the company.

[fol. 590] Q. Are the meetings which are engineered by the Travelers people usually gotten together at the instance of the agent or are they usually gotten together in the course of the ordinary year in and year out routine to hold such meetings?

A. I would say the Travelers' agents endeavor to impress upon the insured that these meetings and safety work are largely dependent on the agent and in most cases the company calls on the agent to arrange the meeting and get the executive of the insured to participate. I think the Travelers correctly look upon the agent as the source of contact with the insured and do not negative his power to help in safety work and thus keep the business and enlarge the business.

Q. That constitutes a satisfactory answer to my question for the reason that embedded in the body of the answer is the statement that the Travelers engineering and claim departments initiate the meeting and call on the agent to arrange it. Now I want you to give me an answer about other companies than the Travelers, if you know about other companies than the Travelers?

A. I would like to answer Mr. Christian's statement that my answer was to the effect that the Travelers always instigated the safety meetings. I would say that the agent instigates these meetings frequently. Regarding other companies, I again reiterate that I have no actual knowledge of what they do.

Q. On page 531 you are recorded as having said that a non-resident agent or broker, living in New York or Chi-

[fol. 591] cago, could not render as satisfactory service in connection with an automobile fleet risk covering automobiles principally garaged and used in many cities of the State of Virginia as a local Virginia agent could render. I ask you to specify what service you are talking about that a non-resident agent or broker, living in New York or Chicago, could not render in connection with such a risk as satisfactorily as a local Virginia resident agent?

A. I think that it is perfectly obvious that an agent located in a big city like Richmond, handling a risk, is in closer touch with the risk than a man located in New York or Chicago. I do not think, according to my experience, that any broker in these large cities makes it a habit to attend safety meetings or take any part therein. I have never heard of one doing it.

Q. I ask you to specify what service you are speaking of? Do I understand that you specify as a part of such service that you, as a Virginia agent in such a case, would attend safety meetings along with the engineering and claim department people, whereas the New York or Chicago agent or broker would not come into Virginia and do so?

A. I think it is true to say that they do not do so and that local agents in Virginia do perform that service.

Q. And you say that you are more apt to go from Richmond to Bristol to attend a safety meeting than a New York broker is apt to come, say, from New York to Alexandria to attend a safety meeting?

[fol. 592] A. I would say yes because we have got more time to do it and while the occasion very rarely arises for these trips around that you emphasize, it is my experience that a small local agent takes a great deal of interest in any fleet risks which are rare in Virginia compared to New York or Chicago and feels that he can give more time and service to it.

Q. You have spoken about attending the safety meetings. What else is there that this Virginia man can do that the non-resident man can't do, acting through the company?

A. I don't know that there is much he can't do in the realm of possibilities. I am only speaking of what I believe to be the practice up to the present date.

Q. What else is there then that he doesn't do, irrespective of whether he can or cannot do it, which the local man does do besides attend the safety meetings? I am trying to get you to specify?

A. My experience is that the broker in a distant city looks to the local agent through whom he places the business to look after any claim disagreements or any complications that sometimes arise under a policy and report to him. It is perfectly true that after he gets the report he would come to the place or make a trip, if he deemed it necessary, but the broker expects his local agent or associate, if he has one, to render service and it is usually done or the broker changes the company or changes the agent to get better service. The question of service under an insurance policy, Mr. Christian, is one of very indefinite extent.

[fol. 593] Q. You have spoken of the service of attending the safety meetings as a service you think that the Richmond man might perform in Bristol better than the New York man would perform it in Alexandria. Do I now understand you to make a further specification that if a claim arises the Virginia resident agent would be better situated to be helpful to the assured and would actually be more helpful to the assured in getting the claim satisfactorily adjusted than the New York agent or broker, who was the producing agent, would be?

A. I do so state because the Virginia agent is more familiar with the conditions and he is the acknowledged agent of the company and the company in most cases listens to their own agents to a far greater extent, in my judgment, than they do to a broker who has no exclusive allegiance to any company.

Q. My question did not relate to a producer who is a broker. I was talking about a producer who is an agent or a broker. That being so, would you limit your specification to cases where the non-resident producer was a broker and not claim an advantage for the Virginia agent if the non-resident producer was equally an agent of the company?

A. No, I inferred your question referred to a broker. It is conceivable that the Virginia agent might have a very much larger volume of business with his company and other relations with his company which would give him a greater hearing and influence with his company than another agent of the same company who might be in a very different position.

[fol. 594] Q. And it is also conceivable that a New York agent of the Travelers Insurance Company might give the Travelers more business than its Richmond agent, isn't it?

A. Perfectly conceivable but his experience on his business and other factors might make a difference.

Q. And it might make a difference which would cause him to be a better instrumentality to assist the assured as well as making a difference which would cause him to be a less good instrumentality to help the insured than the Virginia agent? Is not that correct?

A. That is perfectly conceivable.

Q. I want to ask you if it isn't true that, speaking in round figures, there are 75 foreign stock casualty and surety companies licensed in Virginia, and 7 alien casualty and surety companies licensed in Virginia.

A. What do you mean by "alien"?

Q. British or Swiss or what not.

A. Yes, I think that is approximately correct.

Q. With reference to the number and importance of domestic casualty and surety companies, my impression is that they write so little casualty and surety business that they are substantially not a factor in the total volume, are they?

A. My answer must be a very general one, based on impressions which might be classed as street talk. Casualty companies domiciled and incorporated under the laws of Virginia in our State are few and write a small proportion of the total volume of casualty lines in the State of Virginia.

[Vol. 5-5] Q. What about surety?

A. Surety companies are in the same category.

Q. The only one you know of that is a factor at all in the casualty business is the American Fidelity & Casualty Company which pretty well limits its coverage to bus line liability coverage, doesn't it?

A. Bus lines and freight carriers and special hazards are their principal lines, according to my understanding, though I have no connection with them and know actually very little about their operations.

Q. My understanding generally is that there are about 150 foreign stock fire companies doing business in Virginia and about 30 alien stock fire companies. Is that generally correct?

A. I thought the total was around 200, but 180 may be correct.

Q. My information is that a company like the Travelers or like the Aetna, with their position of leadership in the casualty and surety field, would have approximately 125 resident agents licensed in Virginia; is that correct?

A. I would say they had many more than 125 but I will call your attention to the fact that the Travelers does not write surety business. You mentioned the Travelers and the Aetna being predominant in the casualty and surety field.

Q. What about in Richmond? Has the Travelers got approximately 20 agents licensed as resident agents, would you say, in Richmond?

[fol. 596] A. Yes, I think that is approximately correct, though I haven't had any occasion to check it accurately.

Q. And the Aetna has about the same number or a little less?

A. I would say the Aetna had very many more.

Q. I am not talking about fire agencies.

A. In casualty and surety I would say they have very many more than that.

Q. In Richmond?

A. In Richmond.

Q. Of course, a good many of these agents are duplicates. For instance, you are an agent for the Travelers and you are an agent for the F. & C. too?

A. Yes, sir.

Q. And then you might at the same time be an agent for the Aetna, though you are not?

A. Though I am.

Q. You are?

A. Yes.

Q. So you are an agent for the Travelers, Aetna and F. & C.?

A. Yes, though they know that my principal company is the Travelers.

Q. About these agencies which are represented by membership in this association, is it your understanding that Tabb, Brockenbrough & Ragland is about at the top in vol-
[fol. 597] ume of annual premiums produced in Virginia among all the general insurance agencies of Virginia?

A. We are among the ten leaders, I would say, in the State in total premiums written in the casualty lines.

Q. Couldn't you say that you believe you are among the two leaders in the State?

A. I don't like to make that very extravagant claim because I have never gotten any accurate figures on our fellow agents' volume.

Q. Do you know of any agency to which you could call

my attention that you think has any more casualty and surety premiums than you have?

A. No, I have no knowledge that would guide me in making a correct statement on that line.

Q. Will you proceed to answer that question? I just want you to say what agency, if you know of any in Virginia, to which you can point, you believe has a larger volume of casualty and surety premiums than you have?

A. I feel that we are close to the top in the casualty premiums, but far from the top in surety premiums.

Q. I am talking about the combination of the two.

A. Well, when you combine the two I am right much at a loss to form an accurate estimate.

Q. Name a couple then that have more casualty premiums than you have, if you know of any.

A. You are now restricting the question to casualty?

[fol. 598] Q. Yes.

A. Dobie & Bell at Norfolk, and another agency I can't recall at Norfolk, the Davenport Corporation at Richmond, and Gibson, Moore & Sutton of Richmond are reputed to have quite a volume of casualty business.

Q. You don't know whether it is less or more than yours?

A. And I do not know whether it is less or more, but we are substantially in the same class.

Q. There is a sharp drop down on casualty after you get out of the class of these agencies you have mentioned as to the volume of casualty premiums in other agencies?

A. I would say so.

Q. Coming to the surety business, who do you think among the agencies has a larger volume than your office or may have a larger volume?

A. The same agents mentioned above and Boswell & Curtis of Richmond, Lunsford & Son at Roanoke, are the only ones that I can recall offhand as being in the big class.

Q. In Richmond, after you leave Tabb and Davenport and Gibson-Moore & Sutton, you would possibly come, according to general repute, into the class of Boswell & Curtis and Julius Straus & Sons for total combined volume of premiums, wouldn't you?

A. Yes.

Q. And then it is a pretty sharp drop down from Boswell & Curtis and Julius Straus to other agencies here, accord-

[fol. 599] ing to repute, isn't it?

A. I would say so, though my opinion is not very valuable because those considerations never enter into my head or my activities.

Q. It has been shown in this case that Travelers, without doing a fidelity and surety business, has about a million dollars of annual premiums for the purposes of Virginia premium taxation, and, speaking generally, Aetna and F. & C. and Maryland have about half a million dollars each, theirs, however, including surety as well as casualty. My understanding is that U. S. F. & G. Company has about a half million a year combined casualty and surety and that after that you drop down among the stock casualty and surety companies to Employers Liability with a little more than a quarter of a million and New Amsterdam with a little less than a quarter of a million and the rest of these 80 companies taper off from there. Is that generally in accordance with your information?

A. I would say that that estimate is reasonable, though again I repeat that I never trouble myself with such figures and am therefore a very poor witness as to the relative business of companies in the State.

Q. From your testimony the other day as to the casualty premiums in your agency, I arrived at the impression that of the total casualty premiums received by Travelers in Virginia your agency received credit for the production of about 25%; is that correct?

A. I think that is approximately correct.

[fol. 600] Q. And the other agents, whether they be 125 or more than 125, produced the other three-fourths?

A. Yes, sir, I think that is approximately correct.

Q. You had something to say the other day about companies paying the proper amounts of premium taxes to the State of Virginia. Is it in your mind that perhaps the Travelers or the Aetna or the F. & C. or the Maryland or the U. S. F. & G., or any of the other stock companies, failed to return to the Tax Authorities of the State of Virginia what should be returned for premium taxation?

A. I have a high opinion of all the companies you mentioned and would not for one minute insinuate that these companies evade their tax obligations, and I have no information along this line whatever.

Q. Have you heard in your contact with the business at any time in recent years, from a responsible or informed source, that the State of Virginia is not receiving proper

taxes from stock casualty and surety companies admitted to do business in Virginia?

A. Of course, you hear insinuations of all kinds and these opinions or statements are largely gossip with little or no foundation in many cases, and I am utterly unable to judge of the talk along this line. It never has interested me to a great extent, other than as a citizen of Virginia who hopes that we get our proper taxes.

Q. In asking you the question I spoke of the sources as being responsible and informed sources. You spoke of in-
[fol. 601] sinuations. I want to know if you have ever heard either a reasonably informed source or one that you thought was reasonably informed or a reasonably responsible source insinuate such a thing.

A. Yes, I have had conversations with responsible agents in the state, according to my recollection, who felt that such evasions of taxes were a fact, based on their either seeing a policy or hearing of one that had no Virginia agent's countersignature and which they then assumed might be easily overlooked, either innocently or purposely, in taxation reports to the State of Virginia, the contention being that if a local resident agent in Virginia signed the contract and had the record in his office there would be some check if the State wished to make it and the company would, of course, have a more distinct record of the case, being a Virginia coverage, if it went through a local agent's office.

Q. When did those conversations take place? In the last five years?

A. Yes, I would say not only in the last five years but, from a more or less general impression of agents in the state, it has been going on for many years.

Q. The contracts to which you have reference are contracts which cover in Virginia but which were not countersigned in this period of many years more than five years in Virginia?

A. That is correct, with the additional statement that many of these contracts have been signed by special agents or other salaried employees of the companies with no rec-
[fol. 602] ord given to any local agent which would distinctly place the policy in a Virginia agent's hands.

Q. And the theory is that a resident of Virginia like Mr. Adair, who has raised his family here and is just as much a Virginian as you are and owns his home here, and, as far as I know, is in every way as loyal to Virginia as you are,

if he countersigned a policy there wouldn't be as much prospect of that helping the State get its taxes as if you signed it; is that correct?

A. I admit all that.

Q. I am asking you if my understanding is correct.

A. I would like to say I admit all you say about Mr. Adair whom I admire very much and don't wish to be put in the position of casting any reflection on him or any other branch office employee. My understanding, however, which I think is correct, is that the practice of countersigning a policy by a branch office manager or employee carries with it no record in the Richmond office of that policy and, therefore, the countersignature by such person is more or less a perfunctory operation which differs very widely from the countersignature by a commission local resident agent in Virginia.

Q. Are you aware that the responsible officers of the companies admitted to Virginia are required annually to make tax returns to the State of Virginia under oath?

A. My understanding of the reports required of non-resident insurance companies is that these annual reports are signed by executive officers at the home offices of the com- [fol. 603] pany. While he signs these statements under oath, I think the oath simply states that the figures are correct, according to the best of his knowledge and belief. Necessarily, such executives do not figure out the details on a report and they are perfectly conscientious in taking the oath on such reports which are necessarily based on figures supplied by various clerks and heads of departments and are therefore entirely, in my judgment, beyond the executive's power of knowing personally their accuracy.

Q. And the court should infer that if you had to make that report for the Travelers you would personally examine into all of that million dollars of premiums per year and many thousands of policies involved and you wouldn't make use of the services of clerks in helping you get the information; is that correct?

A. We would make use of clerks but our problem would be so simple that it would be almost impossible to err because our business would be almost entirely confined to State of Virginia premiums. I said in my former answer that I was making no suggested accusation of dishonesty or evasion by any company. My whole statement is that it would be easy for an omission to occur unless the policy was placed through a Virginia agent.

Q. Suppose it were placed through a Virginia agent and this officer, who is a non-resident of Virginia, were making up that tax return each year, he would still have to use clerks, wouldn't he, in assembling the information coming from 48 different states of the United States?

A. Of course he would.

[fol. 604] Q. Why is it you think that in examining his home office records and determining on the allocation of those premiums among the various states that any record you might have down here in your office is going to assist him in making up his tax returns from his records at the home office?

A. I did not so state that it would help him. My entire inference was that it would help the State of Virginia.

Q. How would it help the State of Virginia if he doesn't have the use of your records but he makes up the tax return after making the allocation between the various ones in the 48 states from the home office records? How is it going to help the State of Virginia for you to have this record down here if that man at the home office doesn't use it in making up the tax returns.

A. For the simple reason that if the State wished to do it they could check the office records of the agents in Virginia and such records would be confined to Virginia business and simplify the matter very much.

Q. Under the law of the State of Virginia the Commissioner of Insurance is expressly authorized to visit the office of a company, at the expense of the company, upon any charge of a failure to make a correct return, and, at the expense of that company, to make a thorough examination of all of its books and records, is it not?

A. Certainly he is, but with my limited knowledge of accountancy, I can vizualize very great difficulty in ferreting out policies which partially cover in Virginia in an aggre-

[fol. 605] gate business running into millions.

Q. You are aware that it is made a criminal offense to make a false return, are you not?

A. Yes, I am perfectly aware of it and I do not suggest that the president or other officials of any reputable insurance company would be guilty of purposely swearing to a false statement.

Q. The Insurance departments of the various states are constantly making what they call convention examinations of the companies, are they not, so that your company, for

instance, would likely be examined every two or three years by one of the Insurance Departments of one of the larger states or by the Insurance Departments of three or four or five of the states, acting in concert, and conducting the examination together.

Q. In answer to the question, of course, I would expect you to have reference to your reading insurance journals all the time and seeing where these examinations have been made and I would imagine you would have a great interest in the reports of the various companies as a person whose company is in competition with the various companies. Of course, the objection is quite without foundation, as you know.

A. Yes, I know that the companies are examined by Insurance Departments, but just how far these examinations go in looking at every policy issued by a company appeals to my common sense as being an impossibility and, therefore, I think any safeguard the State of Virginia can adopt to prevent errors of omission or commission is a very desir-
[fol. 606] able step and I do not think the leading responsible companies of the country would have any objection to being thoroughly checked for taxation purposes.

Q. You say you have been in the insurance business how many years in Richmond?

A. 47 years.

Q. You have been countersigning these fire policies and sharing in the commissions when you countersigned, most of that time?

A. I have been in the fire business, roughly, about 25 years.

Q. Tell me, roughly, at what times and by whom, that is to say, by what state officers or their deputies, examinations have been made of your records to check up on whether the particular companies among these casualty and surety or fire insurance companies, admitted to Virginia, have made proper premium tax returns.

A. They have never visited my office for such purpose, but——

Q. Did you ever hear of their visiting the office of any other agent in Richmond for that purpose?

A. But changing conditions have indicated that such might be the case in the future.

Q. What are those changing conditions that would indicate such might be the case in the future?

A. I presume, in answer to Mr. Christian's question, that the changing conditions are based on gossip and hearsay [fol. 607] which have reached me so that such omissions or evasions have grown and may be a serious detriment to Virginia tax receipts.

Q. And you solemnly swear that you have heard it stated by what you regard as an informed and responsible source that evasions of taxes have recently grown in Virginia and might endanger Virginia's tax receipts?

A. Yes, the people talking to me I would regard as conservative and reliable, but I——

A. But I have made no charge that such is a fact and wish to emphasize my preceding testimony that this is hearsay and very indefinite so far as actual basis for any charge is concerned.

Q. I ask you then whether in all the 25 years you have been countersigning policies and maintaining records of them anybody in authority, representing the State of Virginia, has ever examined your records to verify whether they were getting the proper premium taxes, and you said "No".

A. That is right.

Q. That was an entirely accurate answer to my question, that they never have?

A. Yes.

Q. I am giving you, Mr. Tabb, a chance to correct your statement. If you think you have made a mistake and nothing recently has come to your attention to indicate evasions are on the increase, you are entirely at liberty to say you are mistaken and you withdraw that?

A. I don't think I have any reason to withdraw any of my statements which I have very emphatically stated are [fol. 608] reports and conversations of a general nature which lead me to conclude that there must be some reasonable basis for general reports—nothing specific. I could not mention a single policy right now that has been cited to me. It is just a general opinion which may be correct or it may be in error and my only thought is that any double check on the situation is of advantage to the State of Virginia.

Q. You said these conversations were with informed and responsible people in that they were agents whom you considered informed and responsible, didn't you?

A. Yes, sir.

Q. And I call on you to repeat the substance of what anyone of them told you, without mentioning his name. Just tell me what he said to you in general terms.

Q. I ask the witness again to state generally the substance of the remarks made to him which are the basis of his testimony, without giving the names of the parties who made the remarks.

A. I feel, Mr. Christian, that I have fully answered this question and can only reiterate that these conversations are general and have simply made an impression on my mind which I have endeavored to put into the record to clarify my answers. It would be utterly impossible for me to quote conversations or places or names when the whole testimony given by me here has been explained as general and as my own impression derived from such conversations.

Q. At any time, to your knowledge, in the past ten years, [fol. 609] has any agency organization in Virginia, or any responsible agent, or anybody else, made any charge that you know of against a particular company that it has failed [fol. 610] to make proper tax returns and caused an investigation of that company's books and records to ascertain whether or not it has made false tax returns?

A. I do not recall any accusation made by any individual or association, but, to illustrate my point, companies who are supposed to be entirely reputable are guilty of writing policies in Virginia, though not licensed to do so, and know that they are evading the laws of Virginia. I mention this to show the possibility that other similarly reputable companies might do the same thing or might not be as careful in checking up these situations as would be a perfectly apparent result if the Virginia business were segregated.

Q. What other services are there, in addition to attending those meeting and giving better help in connection with the adjustment of claims that the local man can give better than the non-local man could give?

A. I think the local man necessarily knows more about any local developments that might occur. Of course, all of this question involving service is one of development and not fixity and my testimony is to the effect that the local man should be in a position to render unexpected services more promptly than a man situated many miles from the state under consideration.

Q. What are these local developments with reference to these fleet policies which you have in mind when you say that

the local man would understand those local developments better than a non-local man?

A. Well, they are so indefinite that it would be hard for me to define them.

[fol. 611] Q. Could you illustrate them if you can't define them?

A. Well, to illustrate them would be a very definite definition.

Q. Why is it that the claim service and engineering service of the company wouldn't be made available in those sudden emergencies of which you speak, just as readily in one case as in the other?

A. I think so far as the Travelers Insurance Company is concerned, the claim and engineering service might fill the bill completely but my testimony is along lines of all casualty companies, few of which maintain the accurate and far-reaching service of the Travelers.

Q. Naturally, you think the Travelers is the best company. The Fidelity & Casualty and the Maryland and the U. S. F. & G. and Aetna, Employers, New Amsterdam, and plenty of others I could mention, are able to live in competition with the Travelers, aren't they?

A. Yes, sir.

Q. And they, speaking generally of that group that I have mentioned and similar companies, purport to give their assureds just what the Travelers purports to give, do they not, speaking generally?

A. A purport and actual fact are often wide apart. I have actually had companies state that they were unprepared to give service and, therefore, wanted to cancel the risk which the Travelers took over and was abundantly able to furnish the service and, therefore, I have made the dis-[fol. 612] tinction in favor of the Travelers, bearing in mind that my long connection with that company makes me more familiar with their service and I do not claim to know all about the service of other companies.

Q. The point of our departure in this discussion was we [fol. 613] were talking about service. You had said that a Virginia resident agent would know more about local developments than a non-resident agent and I had asked you to specify what kind of local developments you were talking about that the resident agent would know more about than the non-resident agent, and I want you now to come back to that, please.

A. My reference to developments is two-fold. First, rates and rules applying to cars operated in Virginia are changed from time to time by the companies, and it is my opinion that a resident Virginia agent keeps in closer touch on strictly Virginia questions than a non-resident broker who might have business in 48 states, and the changes go on in each of the states; second, I can conceive of local ordinances, state laws and other more or less important changes would be within the knowledge of a local man very much more readily and completely than in a non-resident who has a wide territory and consequently would not be in such close contact and keep posted on a local situation.

Q. But you will admit that it is the duty of the local Rating Bureau to keep abreast of those things, will you not?

A. Yes, but the local Bureau assumes no responsibility for the application to an existing policy and expects us agents to look after the application of those rules.

Q. Wouldn't it be the duty of the National Bureau to keep abreast of those things, too?

A. Not so far as changes are concerned under existing policies in the states. I have never had the National Bureau to write me, so far as I remember, in connection with any matter.

[fol. 614] Q. But I mean they keep abreast of the changes for whatever effect they may have, either on existing business or future business and record them all, don't they?

A. I presume they do.

Q. You know they do, don't you? You know they are supposed to?

A. I am trying to testify to what I know and I don't know whether they do, or not. I have no means of knowing. I have no contact with the National Bureau.

Q. The companies keep abreast of them, don't they—the Travelers, for instance?

A. I would state, Mr. Christian, that in my humble judgment many companies do not keep very well abreast. This sounds to be a strange reply but I just feel, out of my experience, that some companies are very much more up-to-date, and on their toes than other casualty companies.

Q. That applies to agents, too, doesn't it?

A. It certainly does.

Q. If I am an agent having coverage in 48 states and I am under the same obligation to my assureds as a person only having coverage in one state, would it be presumed

that I would attempt to so organize my office as to keep abreast of what is going on in all the states of my coverage, or that I would attempt alone, and without the aid of any assistance, to keep up with all of those 48 states?

A. I would say you would do the best you could to keep abreast of it and it might be perfectly possible for you and your organization to keep entirely posted, but I submit [fol. 615] that an organization having a very limited territory, such as one state, could more easily perform that service.

Q. Of course, an organization with a given man, Mr. John Doe, in it and three given assistants, Messrs. X, Y and Z, having exactly the same volume of business, could attend to it with less trouble if it were all in one state than if it were in 48 states, but assuming that the personnel of the organization and the numerical strength of the organization is varied to meet the size of the business, then there is no more difficulty with keeping up with 48 states than there is about keeping up with one?

A. No, but we are talking about averages, as I understand it, and not some very outstanding non-resident organization which can perform a service and does perform it with great efficiency.

Q. In the case of these risks of these large assureds covering country-wide, do they usually go to agents and brokers with these efficient organizations of which we have been speaking or do they usually pick out some country boy in the backwoods and put their nation-wide coverage with him?

A. Well, of course, I wouldn't be so foolish as to accuse the heads of large nation-wide organizations with utter lack of judgment, but I believe, from my observation, that many large risks are placed with totally incompetent brokers and agents.

Q. Both in Virginia and out of Virginia?

A. Yes, but in Virginia we have so few headquarters of national organizations that I am not familiar with any of the activities of corporations with headquarters in Virginia [fol. 616] that would lead me to think that this condition prevails, because we haven't got them.

Q. Most of the Virginia offices of these large foreign corporation assureds have only people of very limited responsibility and authority in them, don't they?

A. I think the practice varies and certainly, so far as insurance is concerned. Some of them have their local

representatives place the insurance and others place it from their headquarters.

Q. You don't challenge their right to do as they wish about that, do you?

A. Not at all, but I hope that all of them will adopt the practice of placing it locally.

Q. And they will come mighty near doing it if this law stands up, won't they?

A. I don't know that the law has any bearing on it because it means not a nickel of expense to the assured.

Q. Presumably it would mean less service from the non-resident agent or broker if the non-resident agent or broker is not going to get but half as much money as he has been getting for performing that service, wouldn't it?

A. The assured would get, in my humble judgment, better service, and if the corporation sold its goods in Virginia I am satisfied they would get a great deal more business from agents and their friends and families in Virginia.

Q. My question is that if the large foreign assured, which has been placing its business with the non-resident agent [fol. 617] or broker who has been receiving all of the producer's commissions, continuing hereafter to attempt to place his business with that non-resident broker, nevertheless, has the transaction subject to that broker giving up half of his commission to some Virginia agent, wouldn't it be reasonable to suppose that that broker, as an economic proposition, would have to furnish less service than he has been furnishing up to now when he got the whole commission?

A. I don't think so because he couldn't hold the business unless he furnished service entirely satisfactory to his assured. The question of the amount of commission we receive does not enter into the service we render in any particular. We render the same service for $10.00 that we do for $10,000.00 and that has no bearing on the service question under an insurance policy.

Q. And you could go through life doing everything that you now do whether you were dealing with cases that had an average compensation to you in them of $10.00 or dealing with cases that had an average compensation to you in them of $10,000.00? Is that what you would have the court believe?

A. This insurance business is largely one of personal service, in my judgment, particularly when it is confined

to one state. The man producing the business, therefore, renders the service, and if he makes less money he has less income but his plan would be through excellence of service, to increase his business and offset any loss in percentage of commission.

[fol. 618] Q. I will put it to you this way: Supposing that the persons who are presently enjoying the emoluments of these foreign assureds, and who are non-resident agents or brokers, as the years flow past, die off and a new crop of those people has to come in, but the gross income that those new people can get from this business is only half of the gross income that this generation of those people have been getting, would you expect that second generation to be as efficient and outstanding people in the profession and to furnish as much service as this generation had furnished, notwithstanding they were only going to get half of the compensation for furnishing it?

A. I have never seen any difference in service on an insurance policy resulting from a cut in the agent's commission.

Q. Will you answer that question, now please?

(The question was read.)

A. Not necessarily because the half of the commission they would lose to local state agents would be offset by the service given by the state agent which would necessarily diminish the necessity for duplication of service by the non-resident agent.

Q. And you rest on what you have told the court thus far in my examination of you as to what that service that the local agent is going to furnish consists of?

A. Yes, I think I have covered the ground pretty completely.

Q. So what you think is the effect of this law, as I understand it, is that it is going to impose on these non-resident agents and brokers the necessity of ceasing to do a good deal that they have been doing and letting these resident [fol. 619] agents do that and that the assured is going to be better off because of the effect of that compulsion and the resident agent is going to be better off and this non-resident agent or broker is going to be just as well off?

A. Practically that is so and in many cases I think the assured would be better off.

Q. At the bottom of page 531 of this transcript Mr.

Staples asked you did you think that actual contact by the agent with the physical conditions pertaining to one of these automobile fleet risks is important in rendering service and you said it should be. What physical condition were you speaking of there that you stated to the court it was important that the agent should have actual contact with?

A. If a question came up as to the proper classification of an automobile, the local agent could inspect the vehicle with no expense, whereas, an agent, located outside of the state, would be compelled to make an expensive trip, both in time and money, on possibly a very simple and non-productive proposition.

Q. Your inference there is that you could go to Bristol or Alexandria or Roanoke without expense, but a Washington man would be subjected to very heavy expense to go to Alexandria; is that correct?

A. No, sir, I did not mean to imply such. I had reference to the agent being located in the same city or town where the automobiles are principally garaged.

Q. But in this suppositious case that you and Mr. Staples were discussing they are garaged at various cities [fol. 620] around the Commonwealth?

A. Well, in such a case the local agent would incur the same expense that the non-resident might if the distance was practically the same.

By Mr. Christian:

Q. Suppose some question came up about the proper rating of a particular car and suppose the car was six or eight miles from 11th and Main streets where your office is, as would be so with *with* some garages, and certainly more than a mile as to most of them, it would be a good deal easier for you to have the Travelers inspection people to look at that car than for you to go there and do it yourself, wouldn't it?

A. In the case of automobiles, we usually do it personally because it doesn't involve any engineering expertness.

Q. That isn't the question I asked you. I asked you wouldn't it be a good deal easier for you to pick up the 'phone and call Mr. Murphy up and ask him to do it than to go one, two, six or eight miles yourself and do it?

A. Yes, it would be easier but we think it would be more satisfactory to do it ourselves in a case of that kind and

I don't recall ever asking the engineering department of the Travelers to perform that service.

Q. You have a perfect right to ask them to do it, haven't you?

A. I have, surely.

Q. And they would cheerfully do it, wouldn't they?

A. I think they would.

Q. And they are here to do it?

[fol. 621] A. I don't know that they are specifically instructed by the company to render that form of service, though I have no doubt they would, but I again repeat, Mr. Christian, that in a case of that kind the agent does it himself just as a matter of common practice.

Q. What are the physical conditions then, in connection with this risk, which you have reference to in answering Mr. Staples' question as to whether it was important for the agent to have this actual contact? You have given one illustration of it. Can you give another?

A. Well, it is perfectly conceivable that accidents occurring might be somewhat dependent on the physical condition of cars and the agent should look into that and to do it most efficiently he should be personally familiar with the physical conditions in order to discuss their improvement with the insured or his representative.

Q. Your thought is that a car is more apt to be involved in an accident if the equipment is not safe than if it is safe and that it is important for the agent to be close to that car where he can keep an eye on it and make certain that it is at all times safe; is that right?

A. No, an agent doesn't take the burden on himself. I referred to a development that would point to the possibility of the equipment being poor. It doesn't often occur because people usually keep their cars in good condition physically, but I say it might occur and I think the agent would perform an important function in posting himself absolutely on those conditions so he could intelligently handle it.

[fol. 622] Q. That development would arise because you would notice some accidents happening which were attributed to faulty brakes or to the tires blowing out or this or that; is that correct?

A. Yes, or by observation of the cars, if they were retail deliveries, or something that came under your usual sight on the streets of your city.

Q. You mean that you would see them involved in accidents?

A. No, not necessarily. You might see them on the street and have no accident and yet form an idea that they were very much run down and in need of repairs, or you might see haphazard, careless driving on the part of the driver and report that to the assured. Those things will occur and an agent would feel like it was to his interest and his company's interest and the assured's interest to take that up. Those are the personal contacts that I had reference to.

Q. Taking the cars that you insure down at your office, you only see from day to day a very small number of them, don't you?

A. Of course, necessarily.

Q. And that is an insignificant thing you were talking about, the benefit the general body of assureds in your office get from your seeing their drivers driving too fast on the street or seeing that their equipment is ramshackle and telling them they have got to buy a new car or get rid of the fast driver, isn't it?

[fol. 623] A. I am only mentioning these things, Mr. Christian, to endeavor to enlarge on my testimony at your request as to what all of this service I have mentioned consists of.

Q. But you admit it is a diminutive thing that you are talking about now?

A. It might be diminutive and might be very farreaching. No one can tell.

Q. And you also admit very cheerfully, I suppose, if you notice my fleet looks ramshackle that you would much prefer having Mr. Murphy's inspection of the fleet and report on whether it is safe mechanically than to have to transmit to the assured any ideas you might form on the subject by watching the cars go by on the street?

A. I would certainly call in an expert to compare my opinion with him and get to a conclusion based on both.

Q. You don't have to call him in. He is constantly or periodically performing that service, isn't he, without being called in?

A. I think as a general rule the Travelers make those inspections but I am not informed that the average company does.

Q. You have got a pretty good notion that those in the group I mentioned by name this morning aim to do it and have got the staff to do it?

A. I would entirely side-step any suggestion of what our competitors do. My private opinion might not be either accurate or complimentary.

Q. On page 533 day before yesterday you were recorded as saying, in connection with a Workman's Compensation [fol. 624] policy, covering solely in Virginia, an agent who produced that contract would take pleasure in pointing out to the assured, on renewal of the policy, the reduction in the rate procured due to favorable experience and added that in order to get that favorable experience agents have inspection and claim service discussed rather frequently. Again, you will admit the Travelers does that, not only for Mr. Tabb and its other one hundred and odd agents in Virginia, but for these non-resident agents and brokers that have risks of that type in Virginia as well; is that correct?

A. Yes, I have no doubt that the Travelers gives the same service to all policy-holders, regardless of where the policy may be written.

Q. And that is going on without your having them do it at all? They do it, don't they, whether you have them do it, or not?

A. They do it to some extent but I again state that that extent is often very much increased by the requests of the local agent and his personal contact with the risk.

Q. Don't you know, Mr. Tabb, and frankly admit that Mr. Murphy has a card on every risk and that the regulations under which he works provide for periodic inspections of that risk and notation on his records of findings and recommendations and the assured gets those recommendations and I think you get copies of them right straight along all the time?

A. Those recommendations usually pass through my office to the assured and not direct, and while you are entirely correct in stating periodic inspections are made, that illustrates my point exactly. We give more than periodic serv- [fol. 625] ice. We frequently send the inspectors for more inspection. For instance, a boiler is inspected once a year. We very often have them inspected two or three times at our own request and on our own initiative.

Q. And the Travelers Insurance Company doesn't write boiler insurance; the Travelers Indemnity Company does?

A. Well, that is the same thing. It is all owned by the Travelers Insurance Company. We regard it as all one.

By Mr. Staples:

Q. Does it have the same engineering force?

A. Yes, sir, the same engineers.

By Mr. Christian:

Q. They always inspect the risk as soon as it comes on the books, don't they? As a matter of routine a new risk is inspected by them?

A. Yes, sometimes not for several weeks or months, depending on how busy they are and there is no fixed date of inspection.

Q. But there is a fixed rule to inspect new risks in the due course of business?

A. Certainly, yes, sir.

Q. And while you might call up Mr. Murphy and ask him for it this week instead of next week, if you hadn't called him up he would have gotten around to it shortly, wouldn't he?

A. He would, but my reference was to more inspection and not to the one inspection.

Q. When you call him up and ask him to inspect something, as a rule it is because some doubt has arisen as to the classification or as to the correctness of the computation of the premium isn't it?

[fol. 626] A. Not exclusively.

Q. I mean usually.

A. Well, In the case of boilers it is more because something has happened that makes me or the assured jointly feel that more inspection service is necessary. The same applies to elevators and all.

Q. That is a relatively trivial part of your business, the boiler business?

A. No, I wouldn't say so. We write quite a substantial boiler and machinery business.

Q. All 125 agents collected $18,000.00 of premiums, I notice in 1935 from this book. I will ask you to refer to page 285. Is that correct?

A. I assume it is correct as it appears in the Virginia Insurance Report for 1935 but you are going a long ways back.

Q. It is for '36, covering the operations for '35.

A. But you are going a long ways back and boiler premiums have been very greatly increased since that date.

By Mr. Christian:

Q. You were speaking about your making those requests for inspection service and that you got the inspection reports instead of the assureds getting them. Are you able to say whether ordinarily, among the agents of your company and others, that is true rather than that those inspection reports go to the assureds?

A. It is done both ways. I don't know what the custom of other companies is because I have had no opportunity of investigating that.

[fol. 627] Q. You know that it is only because you happen to have them sent to you instead of the assured that they are sent to you, don't you?

A. I guess the company understands my general wish for them but the policy is to use the agents to get compliance with inspection requests.

Q. The policy is to send the reports to the assured, however, unless the particular agent, who is the producing agent, asks otherwise?

A. If that is done a duplicate is always sent to the agent so he can follow up and the company usually writes the agent to find out if the inspection requirements have been complied with.

Q. Mr. Tabb, you know that is not so, that the company has got to write you to find out whether the recommendations of its inspector have been complied with, because it has got Mr. Murphy and eight other engineers that it can send there itself and find out, hasn't it?

A. Yes, but that involves substantial expense, Mr. Christian, and the company writes me for a report on these inspection requirements which costs them nothing. Of course, if I am unable to get it they usually wait, unless it is an imperative suggestion, until the next inspection to see whether it is done or not, but anything of real importance they follow up with the agent.

Q. Your assertion is that if Mr. Murphy says that a certain vat isn't properly guarded and that it ought to have a

guard put around it to keep the workmen from falling in, the Travelers' Hartford Office, after communicating that [fol. 628] recommendation to the assured, sits down and writes you to ask you whether that vat has been changed; is that correct?

A. Yes, sir, usually.

Q. And your assertion is that it is not a practice for Mr. Murphy to go and look at it and see whether it has been fixed to his satisfaction?

A. Not immediately, but if they get no results from me I think they will follow it with another inspection visit.

Q. They make another inspection anyway in another three months in the case of some of the risks and another six months in the case of some and another year in the case of some, don't they?

A. That is correct.

Q. And if they thought it was very important to them, they could make the inspection in another week, couldn't they?

A. They could, but they don't usually do it.

Q. They are more interested in whether a condition of danger is remedied than you are, aren't they, in that they have got to pay the loss if that condition caused a loss?

A. Of course, they are more interested from a payment of a loss standpoint but they look to me to insist and assist very materially in getting the recommendation carried out.

Q. And the assured has got just as much interest in getting an unsafe condition remedied as you have too, hasn't he, in that his premium will be increased if an unsafe condition causes excessive loss experience?

[fol. 629] A. He should, Mr. Christian, but you would be amazed at the resistance of, I will say, the majority of operators of plants to safety measures which might involve expense.

Q. You say a producing agent is very helpful to the company in persuading the assured to follow the engineer's recommendations at times?

A. Yes, because the agent indicates, if he doesn't tell the insured, that the continuance of his insurance is based on that, and then he, of course, goes into many arguments to show the insured that he should comply with the recommendations.

Q. And these recommendations often involve the spending of right much money. For instance, in this tobacco risk

there was a recommendation sometime ago involving an expenditure of right much money, wasn't there?

A. Yes. Practically all of them involve some expense and that varies according to the extent of the recommendation and the nature of it.

Q. Would it be reasonable to suppose that the producing agent, who is in contact with the officers controlling that expense, would be the best man to work on that officer to get him to authorize the improvement?

A. Yes. Experience has evidently proven that the agent gets results better than any other source.

Q. And if the officer who has the authority to authorize or withhold authorization of the expenditure, lives in Richmond, then you would be conveniently situated to get him [fol. 630] to do that? If he lived in New York you would either go to see him in New York or write him in New York, wouldn't you?

A. Yes, but usually with matters of safety the local manager has sufficient authority to proceed.

Q. And usually his superior in New York has sufficient authority to make him proceed if he is unwilling to do it, doesn't he?

A. I think so, but I believe a president, living in New York, would authorize a resident at the plant to use his judgment rather than the president in New York using his well-established superior authority.

Q. I mean if that man were recalcitrant and wouldn't do what the safety engineers said to do, which was patently a thing that should be done, the president could make him do it, couldn't he, if he were advised of it?

A. I presume so, but the local man would be mighty foolish if he put up his judgment against his superior in New York or caused a violent rupture with the insurance carrier on the ground.

Q. I thought you said ordinarily they were very unwilling to do it and that you had to work on them to make them do it, that I would be surprised.

A. I said that you would be surprised at that unwillingness, referring more particularly to locally owned and controlled plants, but I think the same general condition would apply to national plants.

Q. Do you remember speaking about this risk that you have in association with a broker which you described as a

[fol. 631] tobacco risk when Mr. Staples was examining you, either yesterday or the day before?

A. I may have but I don't remember, but proceed with your question. I think it would probably bring it to my mind.

Q. I was wondering if the tobacco risk we were discussing today and the tobacco risk you were talking about on that other occasion were the same one.

A. They might have been, but I would have to refer to the records to see if that is true.

Q. Have you got more than one tobacco fleet automobile liability risk of substantial dimensions which you handle in association with a New York broker and divide the commissions?

A. I don't recall but one right offhand.

Q. I got the notion from what you said the other day to Mr. Staples that it was very imperative that an agent contact the operators of any plant and undertake to get the operation improved from a safety standpoint instead of leaving that to the claim department people and the engineering people of the company, but I did not understand precisely why it was that an agent could do that better than the claim person or the engineering person, and I would like you to explain to me why it is that the average of these hundred and odd Travelers agents around Virginia could do that better than a man like Mr. Murphy or Mr. Davison and, therefore, why it is imperative that one of these hundred and odd agents should do it rather than Mr. Davison or Mr. Murphy.

[fol. 632] A. The reasons are perfectly simply, from my long experience in such matters. The most expert engineer does not claim to have any great power of using his facts to bring results. He is not a contact man. He has difficulty in most cases getting to the final authority of a corporation or firm. The agent has been in such contact to get the business. The rates to his client are largely dependent on accident prevention. The insurance company further realizes that the agent has a proprietary interest in the premium and, therefore, puts it squarely up to him to do everything necessary to retain the business and to make the risk safe for the insurance company. There is a great and close interest between the insurance agent producing the business and the company assuming the liability. The inspector or engineer is simply an incident thereto and is

often almost tongue-tied when it comes to arguments with heads of big corporations.

Q. And you reaffirm today that this producing agent who got the business and who got the contract from the president is about the only man who can get the president of a corporation to address his employees on the necessity of carefulness?

A. In the majority of cases I would say yes. Sometimes you might strike an engineer who can perform this service but I don't think the companies employing such inspectors feel that that is an essential part of their duties.

Q. Suppose a producing agent got this contract from the head of a big corporation which enables him to have an [fol. 633] entree to see him and that the chief engineer of the company or the chief adjuster of the company, being tongue-tied and also not being able to get an entree to the president, can't talk to them, and suppose that president lives in New York and the risks are scattered around in 20 or 30 states, is it your idea that a local agent of the Travelers in each of those 20 or 30 states has that same more convenient opportunity to see that president in New York and that same better entree to see the president than the head engineer of the company in New York would have or the head claim man in New York would have?

A. I don't want to suggest such a foolish proceeding as to have an agent from every hamlet in Virginia go to the headquarters of a New York executive to talk these things but I do say that the most prominent agents connected with the risk in the state would usually be empowered to represent the group and make their appeal. I again, though, Mr. Christian, refer to my answer preceding that in the case of local plants there is usually some superintendent or head man who is empowered to discuss these things and act on them without reference to the president or other executives in New York.

Q. Do you think it is more efficient for these companies to be guided by the advice of whoever happens to be the local agent in some one particular state as to what safety measures it shall adopt in that state and be guided by the varying advice of whoever happens to be the local agent in the next state as to matters within that state, and so on, around the [fol. 634] country, or do you think it would be somewhat less troublesome and somewhat less expensive of the salaries of the important employees, and somewhat more conducive

to uniform efficiency to have all of that done country-wide at one time, and, through a dealing between one officer of that corporation and one insurance agent?

A. Well, I have not, in my experience, had any far-reaching group of safety measures that were so vitally important in many plants to necessitate going to the president. I would say that these matters are usually handled by the local people and in Richmond, for example, we have awards made by the Safety Council of Richmond on superior safety measures and, in the interest of such a local owner, we can get results oftentimes when purely a plant consideration in New York might not be so effective.

Q. If I am the owner of a fleet of trucks that carry my gas and oil around in Virginia and I have got another fleet of trucks carrying my gas and oil around in North Carolina and one in West Virginia, and so on, I would ordinarily have the same kind of trucks and pretty much the same kind of rules and regulations governing these drivers and the trucks would have pretty much the same routine, would they not?

A. They would but the human equation of the drivers is, in my judgment, and I think can be easily demonstrated to be the controlling factor. If we have a handsome silver award to present to the Richmond drivers and they don't have it in North Carolina and West Virginia, I am satisfied that my bringing that to the attention of the drivers in Rich- [fol. 635] mond would have very great effect in their more careful driving of the same class of trucks.

Q. The same way a man who is making cellophane and has factories in each of a dozen states, or more, while he wouldn't be blind to the improvements in the types of machines in making cellophane and he would put in improved machines as they came along, and each time he built a plant he would strive to have it laid out a little more efficiently than the preceding plant, there would be a general conformity of the machinery and the processes in all of those plants, wouldn't there?

A. There would be, but the same human equation enters into every one of these machines that is humanly operated.

Q. It is also true, isn't it, that if I own a lot of theaters all over the country, in general I have a house with a box office in front of it where the tickets are sold and one or more gates of ingress with a ticket-taker there and one or more gates of egress, and pretty much the same kind of

seats and screen and projection room, and so on; isn't that correct? That is fairly uniform in all of my operations?

A. It would seem so from that simple statement but the facts show that where safety work is done the same identical equipment will not produce accidents and where that Safety work is not done they will produce accidents.

Q. The same way, if I am the owner of the Atlantic and Pacific Tea Store or the Pender Company or the Kresge Company or the Peoples Drug Store, there is a pretty general similarity between my various units in the various [fol. 636] states, in the way the soda fountain is rigged up and the way the prescription counter is rigged up and the way the store looks to the user, is there not?

A. I think my preceding answer covers it and it is clearly shown——

Q. I am asking you, first, isn't there *is* a general similarity of units.

A. Yes.

Q. In physical equipment and method of operation?

A. Yes, but safety work can change the picture entirely.

Q. If I need or think I need $20,000.00 and $200,000.00 public liability insurance in North Carolina, the probability is that the same things will make me think I need it in Virginia; isn't that true?

A. Yes, sir, but you will find that the live agent in Virginia increases those limits, whereas, with no such effort in North Carolina, you might allow the limits to stay the same.

Q. Do you think it is likely that one of these live agents out of the 125 that the Travelers has in Virginia, the average one of them, is liable to make the Standard Oil Company of New Jersey, for instance, carry more liability insurance on its trucks that it uses to carry oil and gas around the state, at the same time that the Standard Oil Company, not having the benefit of these suggestions from one of these agents in West Virginia or North Carolina, might go along with the same limits it has got over the rest of the country on that sort of protection? Is that the inference you wish to have the court draw?

[fol. 637] A. It is not only my inference but my considered opinion that a live Virginia agent can persuade the Standard Oil Company to charge the limits of its Virginia coverage if he can point out some local ordinances or laws in

Virginia that make the hazard greater and justify the difference in protection.

Q. Do you know of anything that is true about Virginia that would justify one of these Virginia agents telling the Standard Oil Company that it ought to have larger amounts of liability protection on its Virginia trucks than those in any other state in the United States?

A. I think that difference in limits is often carried in different states for apparently the same class of operation. I do not wish to mention any states that might put me in the position of casting a slur on a sister state of Virginia, but I happen to know that in certain states it is easy to convince an insured, however large and wealthy he may be, that his limit should be very much increased in that particular state.

Q. Is that state Virginia?

A. No, sir, not especially.

Q. You don't know of anything about Virginia laws or ordinances that would give you a good argument to make that you ought to have either more or less liability insurance in Virginia than in the District of Columbia or Maryland or West Virginia or North Carolina on a fleet of automobile trucks engaged in delivering petroleum products?

A. I will make this statement, that I think our friends in the north feel that where trucks are driven by colored men [fol. 638] it is very essential to have very adequate limits.

Q. On page 534 you are recorded as having said, "In many cases we have to work hard on a big man, the president of a corporation, to interest him in safety and accident prevention. I know of cases where we have worked for years to get a president to address his employees on the necessity and imperativeness of carefulness and other things that he can personally impress on them more than any agent or inspector and when we get a president to address his employees, we have gone a long ways in accident prevention and this is peculiarly the duty of the insurance agent handling his business. In fact, the resident agent is about the only man that can get a president of a corporation to do that job." I want to ask you why you put that word "resident" in there?

A. I was more specifically referring to the resident of a state in which the plant is located.

Q. I want to ask you why it is that, if the president lives in New York, an agent who is resident in Virginia where the coverage is, is about the only man who can get the president

to do that job, and I also want you to tell me just how you would go about it if you were that resident agent, exercising your function to get him to do that job and knowing you are the only man who can do it?

A. I don't think I made the categorical statement that I was the only man that could do it if I was the agent on the risk, but I think I would have the best chance of doing it and, if he was a resident of another state, I believe he would listen to me with great attention if I had my facts well [fol. 639] marshalled and lived where his plant operated and knew the way in which his plant was regarded both by employees and the public.

Q. Would you write him a letter or would you go to New York to see him?

A. I think I would be more likely to go to New York to see him. Of course, that would depend on the seriousness of the situation and somewhat on the size of his business.

Q. Wouldn't it be easier for his resident agent, who was the real producer of that business and who was in New York, to talk to him then for you, who, so far as he is concerned, is a mere countersigner in Virginia, to go up there and talk to him?

A. I think that as a matter of good business his agent in New York should be able to get the result desired.

Q. Then why do you say here that the resident agent, whom you have defined today as the resident agent in Virginia, is about the only man who can get the president of the corporation to do the job if the president is in New York?

A. I have more reference, of course, to Virginia corporations and president or executives located in Virginia.

Q. So you don't mean to say that an agent like yourself would be the only man who could get the president of one of these foreign corporations that had placed its business through a New York broker or agent to do that job, do you?

A. No, I don't mean to say I would be the only person who could perform the act.

[fol. 640] Q. Don't you recognize that the main part of this dispute that is now in court in connection with which you have given testimony relates to that sort of business rather than business where the president lives in Virginia?

A. Certainly, and I think the association as intended under the Act gets that service from the local agent through his broker to the proper source and, therefore, increases

the value of the insurance contract to the man who pays for the premium.

Q. And you think it is worth to an assured, if his annual premium is $10,000 a year and the commission on that premium is $2,000 a year, paying you $1,000 of that $2,000, in addition to paying the outside-of-Virginia producer what is reasonable and proper, in order to enable you, by whatever processes you adopt, to lend your services in getting the president to make addresses when you think it is necessary and do other things that you think are helpful to that assured; is that correct?

A. I think that experience will prove that it will be but he does not pay that $1,000 in addition to anything he is now paying. The assured or policy-holder pays no more and, therefore, anything that he gets of advantage is that much to the good for which he pays no additional premium.

Q. When you say it is not going to cost the assured any more money for Tabb to get the thousand dollars that Tabb has not heretofore gotten, and it is not going to cost the company any more for Tabb to get that thousand dollars, then we come to the point where you think the thousand dollars is just going to fall on the non-resident agent or [fol. 641] broker alone; is that right?

A. Yes, but I think that he will get something in return, such as local service, which he may not have gotten before and that will, in turn, save some of his traveling expenses and other expense which will go to offset in part the apparent loss. He will also have a local agent associated with him which usually results in getting other lines or more business from the assured.

Q. And that association is something, if the assured wanted that non-resident agent to do so or to have and thought it was advantageous to the assured that the non-resident agent or broker should have, he could get without the help of this law by the simple expedient of telling that broker to associate Mr. Tabb with him and divide the commissions with him, couldn't he?

A. Yes, he could do that.

Q. And it wouldn't cost him a cent?

A. Sure.

Q. And the reason that Mr. Tabb isn't getting that thousand dollars now, without the help of this law and never has gotten it, is that the assured hasn't wanted Mr. Tabb to have it. Isn't that right?

A. He has gotten it in many cases, and I wouldn't say that the assured doesn't want him to get it. I think it never has been brought to any degree to his attention.

Q. And that brings us back to what we discussed yesterday when you admitted that in many cases you had brought it to their attention and unsuccessfully attempted to get them to secure that division between the non-resident agent [fol. 642] or broker and yourself and they have refused to heed your wishes just as in some cases they have, as you claim, heeded your wishes? Isn't that correct?

A. Oh, yes. We don't get every risk we solicit.

Q. And if you knew of anybody right now who had a big amount of insurance premiums covering in Virginia which you thought you could get to take away from the non-resident broker or agent, with whom he was placing it, and give it to you or you thought you could get him to make that non-resident agent or broker divide up with you, there is no ethical reason why you shouldn't go and try to get that done, is there?

A. None whatever.

Q. And there is every reason why an aggressive, enterprising gentleman like yourself should go right ahead and do it, isn't there?

A. Well, there are some considerations where you would not do it because largely you would feel that other interests would not justify the risk you would take.

Q. You mean that you might make that broker mad and he might take some other business away from you?

A. Largely, yes.

Q. You said if you couldn't get the president to come to Richmond to make a speech you might try to get him to write a letter to put on the bulletin board of the plant. As I understand it, you think that a Virginia agent could get a letter from the president of a foreign corporation, with [fol. 643] its headquarters in another state, to put on a bulletin board in Virginia better than the producing agent in that other state could get that letter; is that correct?

A. I think there are circumstances under which that would be a fact but I want to add that in handling these large interstate risks to which Mr. Christian has referred I again say that usually some man in the plant, such as a superintendent, has enough authority to listen to your argument and his address to the employees carries largely the authority of the president.

Q. Would there be any propriety in the engineers or claim department people asking that officer to whom you have just referred to make that address?

A. No impropriety whatever. They are working to the same end as the agent.

Q. Do not these big corporations about which we have been speaking usually have engineering and safety departments of their own or official personnel, a part of whose duties is the safety problem?

A. Yes, I imagine the large ones do, but I don't think they see safety measures in just the same light as insurance agents and insurance inspectors, engineers and claim people.

[fol. 644] Q. Don't these corporations with multiple locations and activities in various states usually have a definite policy, either to follow the recommendations of the safety engineers or to submit those recommendations to some other authority and then decide whether to follow them or not, or is it your conception that it is just a haphazard thing whether the local people will follow or won't follow recommendations of safety engineers, and the persuasion of the local agent will determine the course that is to be taken?

A. I don't think they have a haphazard policy but my principal reference is to the human equation, such as appealing to motor car drivers and others in hazardous positions who may be impressed by a so-called disinterested party.

Q. Mr. Tabb, there is a Travelers policy form here which is a specimen of a boiler or machinery insurance policy which we sent upstairs just now to get as a result of a discussion off the record and I notice in that form that, upon the discovery of a dangerous condition with respect to any object, any representative of the company may immediately suspend the insurance thereon by written notice mailed or delivered to the assured at the address of the assured as stated herein or at the location as stated in the schedule of the object to which the suspension applies. Is my understanding correct, not being informed about insurance matters and you being informed about them, that one of these inspectors, on discovering one of these conditions referred to in that sentence, would be authorized under that language to call on the assured to then and there remedy the

condition, and, upon refusal, would have authority to suspend the insurance?

[fol. 645] A. As a matter of fact, I have never known an inspector to take that action without first consulting me as agent, if I happened to have written the policy. I have no doubt that the inspector could take that action, but common usage, as I have said, requires the agent to be called in to do it.

Q. About the matter of these inspectors and the claim people being tongue-tied, am I mistaken in my impression that it is the day in and day out duty of a man like Mr. Davison and his immediate subordinates and of a man like Mr. Murphy and his immediate subordinates to address conferences of working men, drivers, machine operators and the like?

A. We frequently call on them to address them.

Q. Do they frequently make those addresses?

A. They do.

Q. But you say that notwithstanding the fact that they are frequently making those addresses, they remain too tongue-tied to put the thing over?

A. I did not say that they were tongue-tied. I said they are often tongue-tied when it comes to an interview with the president or high officials of a corporation, which is a very different status entirely from addressing employees on a mechanical question with which they are thoroughly familiar.

Q. Don't they see these local plants and make their inspections usually in the company of the Master Mechanic, or some other senior operating man, at the local plant?

A. They frequently do.

Q. Don't they get to know those people?

[fol. 646] A. But not uniformly. They frequently do; but not uniformly.

Q. Isn't it entirely the customary thing, when the company inspector goes to a plant, that the Master Mechanic or some other similar man takes him over the plant?

A. That might be for the first visit but I don't think for a subsequent visit that would be followed.

Q. Is it your idea that they would be too tongue-tied to talk to local superintendents as well as to talk to the president?

A. I again say that I did accuse anyone of being entirely tongue-tied. It was an expression simply to illus-

trate what I had in mind with most types of experts when it comes to addressing big men in the financial world.

Q. Don't you see that Mr. T. Garnett Tabb is accustomed to addressing big men in the financial world, to the extent that that concept hasn't been exploded in the last five or six years that there are such things, but that that is not true of the 125 Travelers agents scattered around in the rural districts and lesser communities of Virginia?

A. I take it that men who are qualified sufficiently to represent an insurance company and who secured the risk in question have enough sense and personality to present the subject of safety to the head of a business.

Q. You are selling insurance contracts, as I understand it? That is your occupation, isn't it?

A. That is not all of my occupation.

Q. But that is where you get your revenue, isn't it?

[fol. 647] A. Yes. The results are that, but I am very much interested in safety work and all the other things that go with the insurance business.

Q. But your primary function is underwriting for your company and selling for your company and out of that grows this servicing that you are speaking of. Isn't that right?

A. Correct.

Q. The primary function of Mr. Murphy is to sell only safety, isn't it?

A. I don't know that I would term it "sell safety". His primary duty is to discover hazards and dangers and report them, both to people in immediate charge of machines, to the company and, either directly himself or through the company, to the agent who produces the business.

Q. But he is selling safety just the same way you are selling safety, isn't he?

A. No, he doesn't sell safety to the parties who pay for the whole works. He is more the check desired by the company than he is to argue or present or in any way enforce safety regulations.

Q. And you think you would be better qualified to explain to my friend and your friend, Paul Miller, at the Tredegar Company why it was that a certain method of making car wheels or horseshoes or projectiles wasn't as safe as some other method than Mr. Murphy would be capable of explaining that to Paul Miller? Is that right?

A. No, I would take the written report of the inspector

and if it was a very complicated thing I might take the inspector with me.

[fol. 648] Q. And if it was a very complicated thing a person like you or myself wouldn't understand it at all, would we?

A. I wouldn't go so far as to say you wouldn't understand it at all, but I don't think that is pertinent. We would take the statement and if Mr. Miller or any other person asked us questions of a technical kind which we couldn't answer we would go and get informed and come back to see him. My whole answer to this series of questions is that the agent is supposed to have the contact and he is supposed to have sense enough to use information furnished by the inspection department of the company to present it intelligently to those who can enforce it and thus increase the value of the policy and enhance the grip of the agent on that particular risk.

Q. But you further make the point, as I understand it, that you could tell Paul Miller, for instance, down at the Tredegar Company, better than Mr. Murphy could tell him why he ought to change a certain operation in the making of horseshoes or projectiles or car wheels or angle bars or spikes or whatnot? Is that true?

A. I know it is true that I can couch the request in language and in attitudes that frequently go much further than the technical ability of the inspector, whoever he may be.

Q. You think that is so of the generality of the Virginia insurance agents?

A. I have no knowledge of how far they can go and anything I might say might be a reflection on them or it might be too complimentary. I am only testifying here under oath to my own personal actions and the rest of it would be simply a matter of opinion.

[fol. 649] Q. And you also think that you could do that presentation better than a man like Mr. Davison who has spent his life in handling claims alone and hasn't had to bother with safety matters or with selling insurance either; is that correct?

A. It is entirely correct. I claim the ability to present the subject better than both of them put together.

Q. But again you don't claim that for the generality of agents? You just claim that for T. Garnett Tabb?

A. That is the only person I am accountable for and I am giving what I think is in my power.

Q. When was the last time you have been to a safety conference and enlarged on safety from a human standpoint in an address to the drivers of a fleet composing 30, 40 or 50 drivers?

A. I don't know just when but I would say a year.

Q. Before you went to that meeting and made that speech how long had it been since you had done it?

A. It is very hard for me to accurately state this because we have talks with the officials and they frequently prefer to handle it themselves. This is not a daily occurence and more largely concerns a risk when its experience is going bad.

Q. Was that meeting you speak of that you said you would estimate as having taken place a year ago the tobacco risk about which we have spoken or was it some other risk?

[fol. 650] A. No, I have never addressed a tobacco risk for the great reason that their experience has not been so bad and their season is short and their drivers are widely scattered.

Q. Were Mr. Murphy or Mr. Davison, or any of their subordinates, at that meeting a year ago that you are talking about?

A. Yes.

Q. Did they make speeches, too?

A. I think so. That is the purpose we take them there for.

Q. When was the last time you have been to a local plant here in Virginia and had all the employees gathered together and you have addressed them about safety?

A. I can't remember the exact date. I haven't found it necessary to do it in a long time.

Q. A good many years?

A. I would say so.

Q. On page 535 of this transcript it is shown that this service costs you money. You say it is very expensive. What do you spend that money on to perform that service?

A. The "Very expensive" statement refers to the expense of the non-resident broker if he was required to come to Virginia. It didn't refer to my expense. It was his expense, if you will read the context.

Q. Your idea is that a Washington or Baltimore broker would find it more expensive to come to Alexandria than you would find it to go to Bristol or Roanoke; is that right?

[fol. 651] A. No, because I referred to the agent in the town where the service was to be rendered.

Q. Is there anything in this law about which we are disputing that says that the countersigning Virginia agent has got to live in the town where the service is to be rendered?

A. My judgment is that if this law is approved the same general rule that applies to fire insurance companies will apply in this case, which is to say that if I sign a fire policy covering ten plants in different cities in Virginia I only receive commissions on the Richmond part of the premium and in the other nine cities where plants are located the commission goes to the agent in that particular city and, therefore, if there is any service to be rendered in Alexandria or Danville or Clifton Forge the agent located there who receives the commission on that part of the premium will render the service.

Q. But we agreed yesterday, didn't we, and I hope as we did so we won't have to go over it again, that under the rules of the Underwriters Association or of all of these local boards that business of dividing it up among the agents in various localities is pretty well imposed on the fire insurance business and there is nothing similar in the casualty and surety business yet which does impose that custom on that business? Is that correct?

A. Yes, I don't know that the casualty companies have made any rule regarding it at all, but I think the agents will ask for that rule and the companies would be very foolish, in my humble judgment, to not do it because by giv-[fol. 652] ing the commission to the agent where the plant is located they encourage him and build up his business.

Q. I want you to bear in mind what you said about dividing up with agents in the various localities because I may have some questions to ask you later as to whether you are dividing up commissions at the present time with agents all around Virginia on your casualty business where it covers all around in Virginia. If you prefer, however, you can elucidate that point now.

A. No, we don't divide up with any agents unless we find it necessary to call them in to get service and I can't remember any case of that kind. There is no law requiring us and there is no rule of the casualty companies. I am simply saying that the fire business is based on that. If

I write a fire policy covering in Virginia at many points I have to divide the commission with the agents where that fire risk covers.

Q. But you also said, I thought, that if this law stands up that same thing is going to come into the casualty and surety business.

A. I said I presumed that would be the ultimate end.

Q. What I want to get at is this: This law doesn't make any change in the legal regulations which are imposed on Mr. Tabb as to whether he shall associate other Virginia agents with him or shall not associate other Virginia agents with him when he produces some casualty or surety business in Richmond that covers in other parts of the state. [fol. 653] Why, therefore, should you presume that hereafter the agents are going to come along and request the companies, and perhaps request all agents also, to change the custom you now follow in the casualty and surety business and adopt your fire custom?

A. Well, my surmise is that this law is aimed largely to make uniform all lines of insurance written in Virginia. Of course, if a Virginia agent produces a risk and the company has no rule regarding division with other Virginia agents, it would then be up to the Agents Association to say whether they would adopt a different rule governing its members, which would be purely an agent's rule and practice and the companies would probably have no objection to anything we did with the commission as it would not concern them.

Q. The agents have not seen fit, however, up to the present time or as an incident to their taking that action of February 13th, to adopt any such rule, have they?

A. No, they haven't discussed it because they have got one thing at a time to do. If the law is not passed as constitutional, there is no use considering other out-croppings from the law.

Q. If the coverage is in 20 or 30 Virginia cities or counties, there ought to be 20 or 30 separate policies, separately countersigned in each of those localities, as is the case in the fire insurance business?

A. It is not the case in the fire insurance business. I have tried to point out to you that one countersignature is [fol. 654] sufficient and the company simply divides the premium up and pays to each agent the commission on the part of the premium that applies to the risk in each locality.

Q. And you deem, as I understand it, that this law is designed to make the casualty and surety companies do the same thing?

A. I don't know that the law is designed to do that but I think the practice set by the fire insurance companies, which are largely parties to this case either directly or through their subsidiaries, would find that that process was the most sensible and would see the actual results of the law carry the greatest benefit to the greatest number.

Q. But haven't we agreed, Mr. Tabb, and I again apologize to you for taking up so much of your time, that the fire insurance companies in their underwriters association and the fire insurance agents in that local board have imposed that on the fire insurance business by rules in existence for several generations and that those rules have got to be changed to get away from that in the fire insurance business. Haven't we agreed to that?

A. No, sir, I have not.

Q. You mean to say those rules existed in these local boards?

A. I said they did exist, but you have added a lot to that. I don't know how the rules came about and I don't know about the reason for them. They are in practice and have proved satisfactory.

Q. You know that the Travelers Fire Insurance Com-[fol. 655] pany is bound to all its agents and to all its associates in the Underwriters Association to adhere to those rules, don't you?

A. They are willingly bound to it. They didn't have to be.

Q. And they have been so for several generations of time?

A. Not the Travelers Fire. They are not a generation old, or much more.

Q. Are you able at the same time that you remain a member of this Richmond Exchange of which you were the first president, to continue to represent the Travelers Fire if the Travelers Fire stops adhering to those rules or won't you be obligated either to get out of this exchange, of which you were the first president, or stop representing the Travelers Fire?

A. I am a little bit doubtful about what rule you refer to.

Q. I am talking about the rule under which the agent in the locality of coverage must get 10% of fire insurance premiums as his part of the commission.

A. I don't think their failure to do that would constitute an absolute reason for resignation of Travelers agents from the association. It might eventually lead to that as a matter of common interest among the agents.

Q. There would be discussion and consideration shown in attempts to negotiate the difficulty, but, under the regulations, didn't we agree yesterday that you weren't supposed, as a member of the local board, to represent a company that didn't conform to the board rules?

A. Yes, sir, I did.

[fol. 656] Q. And therefore, subject to anything that might ensue from a discussion and the making of an exception, what I say is true, isn't it, with that limitation?

A. Yes.

Q. In your discussion just now I got the impression that you had some knowledge that the fire insurance companies were in this litigation. I assure you that they are not named among the plaintiffs and, unless Mr. Staples objects to my testifying and prevents me from doing it, I will say if they are going to pay me any part of my fee I don't know anything about it, but if they are in the litigation and if I am really working for them, I would like to know it. So I will ask you to state in the record why you think the fire insurance companies are in this litigation.

A. I didn't say that they were in the litigation. I said that fire companies owned by the same stockholders or the same general interests were in this litigation.

Q. Do you mean by that that most of the stockholders of these plaintiffs are citizens of the United States and most of the stockholders of the fire companies are citizens of the United States and that they are all drawn from a class of people that have got money and investments and there would probably be a lot of duplications of stock ownership? Is that what you mean?

A. No, sir, I mean that the casualty companies who either own or are affiliated with a fire company, are parties to this litigation.

Q. In some cases.

[fol. 657] A. In several cases that I can mention.

Q. And they are in the cases of what you would call groups that write all lines?

A. Not all lines absolutely but write casualty and fire. They are affiliated companies. I should have used that word.

They are really owned companies. They are not exclusively affiliated.

Q. Is my understanding correct then that the witness has knowledge on the basis of which he thinks he may fairly present it to the court as a truth that the fire companies would like us to win this suit so that they can get out from under this custom we have been talking about?

A. I have never heard the slightest indication of any such desire. In fact, I understand that a number of casualty companies are not even sufficiently interested to take part in the suit.

Q. I am not talking about whether there are some casualty companies that are not sufficiently interested to take part in this suit and as long as you have introduced that topic we will pursue it further in a more appropriate moment. I want to know whether I am correct in my understanding of your testi[illegible]y that you would have the court believe that the fire companies want the casualty companies to be successful in this suit? You said they were behind it or connected with it, or something of that sort?

A. No, I didn't say they were behind it. I said they are connected with it because the same companies, parties to this suit, also own or operate fire companies and apparently are willing to continue the same method of division of com- [fol. 658] missions as they have done for many years on fire business.

Q. If they are connected with this suit apparently, are they connected with this suit to try to make these plaintiffs lose it or try to make them win it? What does their connection consist of?

A. I didn't say they are connected with the suit except the fact that they are either owned or controlled by companies that are in the suit.

Q. But you do not mean then, as I understand it, to infer on this record that you think the fire companies are sympathetic to the casualty and surety companies in this suit?

A. I have no means of knowing whether they are sympathetic or not sympathetic but I have never heard the least indication that the fire companies would like to change their present method of operation.

Q. Why do you try to make out like you think the fire companies are secretly helping us in this suit?

A. I did not so intimate.

Q. You didn't?

A. No, sir.

Q. I was interested to hear you say that there were a great many of the casualty companies that were not sympathetic to this suit and I think that is illuminating because I thought I understood you to indicate yesterday that there was some kind of monopolistic combine of all the casualty companies in favor of this suit and that the reason the casualty companies couldn't be made to conform to this fire insurance custom by the agents was that they were in a monopolistic combination that was too powerful for an agent [fol. 659] to oppose because they would all stand together and an agent who wouldn't bow to their will wouldn't have anybody to represent. Didn't you indicate that yesterday?

A. I did not, in no way, shape or form.

Q. You didn't mean to indicate the other day that the casualty companies were all standing together in this litigation?

A. I don't remember any such testimony on my part.

Q. Don't you remember my pointing out to you, when you made the claim, that the U. S. F. & G. wasn't a plaintiff in this suit that the Employers Liability wasn't a plaintiff in this suit and my disputing your claim that they were acting as a unit?

A. I will have to refresh my memory. I don't recall that.

Q. But anyway, your reflected judgment is that they are not acting as a unit, but that there are a great many of them that don't approve of this suit; is that correct?

A. That is my inference from there being so few of the companies parties to this suit as compared to the total casualty companies licensed to do business in Virginia.

Q. You said that one advantage this Virginia agent would have in Virginia where there was Virginia coverage over a non-resident agent in furnishing service is that he would usually be a patron of the assured. I take it from that you mean you would go to Lowe's Theater and you would buy a Coca-cola in the Peoples Drug Store and go to the five and ten-cent store and make purchases and smoke Chesterfields or Camel cigarettes and buy Esso or Sunoco or Amoco, and so on. Am I right in my assumption that is what you mean [fol. 660] by being a patron or do you buy wholesale from those people usually, you agents, by carloads?

A. I think Mr. Christian has used an absurd lot of illustrations, but I will say that even buying Coca-cola or Esso

or any other article is very often conducive to getting business. I recently heard that an official of the American Tobacco Company made quite a drastic statement in connection with this matter when he saw Luckies not being used on a certain occasion, but some other brand of tobacco, which illustrates forcibly to my mind that the question of patronage is a very important one.

Q. Can't the non-resident agent or broker smoke just as many Luckies as you can smoke if he is willing to subject his body to the ordeal?

A. Yes, but we are talking about agents of Virginia and they number, with their families and friends, quite a formidable army.

Q. I think you said that yesterday, Mr. Tabb. You weren't talking yesterday about getting business?

A. I thought I was talking about the advantage to the non-resident policyholder.

Q. Isn't it a fact that out of the total number of surety and casualty contracts with which an agency such as yours comes in contact, there are only those involving automobile fleets and workmen's compensation risks where there is a really substantial opportunity for servicing by the agent?

A. No, these are not the only forms of insurance that require service. Public liability and boiler and elevator and [fol. 661] every other line of insurance requires service. Some of these I have mentioned require more frequent service than either compensation or automobile fleets and involve more far-reaching considerations, more expertness in the insurance business and more work than either of the lines named by Mr. Christian.

Q. Mr. Tabb, do you occupy the position of the producing agent with reference to any casualty contract in which the assured has its principal office in Richmond, Virginia, and where the coverage under the contract is in a number of states other than Virginia, as well as in Virginia, and the form of coverage is public liability insurance covering miscellaneous improved real estate units such as residences, apartments, storebuildings and the like?

A. Yes.

Q. How many states does that particular contract cover in?

A. 14 or 15.

Q. They include Illinois, Michigan, Louisiana and various other far distant states, do they not?

A. I think so.

Q. Did you solicit that contract in Virginia?

A. Yes.

Q. Is the assured a Virginia corporation with its principal office in Virginia?

A. Yes, sir.

Q. Are the operations of the assured outside of Virginia controlled and directed by its principal officers with offices in and residing in Virginia?

[fol. 662] A. Yes, sir.

Q. Was the application for that contract completed in Virginia, including the preparation of the schedule?

A. Yes.

Q. Was the data used in the underwriting which entered into the making of the contract accumulated in Virginia. I mean by that were their records in Virginia from which you got the descriptions of the various buildings and the elevators in the buildings and the use of the buildings as apartments, hotels, stores, dwelling or what-not?

A. Some of it was and some of it was not.

Q. What part of that data did you have to go outside of the state to get?

A. Little, if any.

Q. Can't you omit that "little" and say you didn't go outside of the State of Virginia in order to do that underwriting?

A. I don't think I went out of Virginia to get any data.

Q. You know you didn't, don't you?

A. I am a little bit doubtful about one or two cases. I don't think I did.

Q. The officers of the assured who made the decision to take out this contract and the extent of the coverage to be afforded by the contract and the pieces of property to be covered by it were all persons with offices in Richmond and who resided here, were they not?

A. They were.

Q. Was not the entire transaction of procuring the con-

[fol. 663] tract, from the standpoint of the assured, planned and directed and carried out by it in Virginia?

A. Yes.

Q. I would like you to state to what extent and at the expenditure of how much time you and your associates in Richmond examined into this situation and discussed the

coverage desired and negotiated the provisions and terms of this contract with the representatives of the assured. That is to say, were you just talking about it to them for 15 minutes one morning or were you working on it for a week or how long?

A. We worked on it very, very frequently.

Q. Over how long a time?

A. I suppose off and on over a month.

Q. It took you several months then to get that contract up to the point where you had presented a contract for acceptance and it had considered all of the terms and conditions of the contract and stated the modifications which it wanted and you had been able to get the company to agree to those and the contract was finally in form to be delivered?

A. Right.

Q. And during that time you spent a rather substantial part of your time working on that case, didn't you?

A. Yes, I would say substantial. I don't know just what percentage.

Q. Did you have occasion to get the assistance of any of your partners or employees in working it out?

A. Yes, my employees, but not my partners.

[fol. 664] Q. How many different people in your office did one thing or another to help you write that business?

A. In the actual preparation and figuring and all, I would say three.

Q. Did they spend substantial parts of their time in the period of months in question in furnishing assistance to you in order to get that business written?

A. Yes, a right fair amount of time.

Q. When this contract came to be prepared was the contract prepared in Virginia?

A. I am a little doubtful about the original contract because we issue our own policies in my office. In this particular case I believe we had it issued in Hartford.

Q. When you say "We issue our own policies in my office", do you mean they are overprinted to bear the name of your agency?

A. Yes.

Q. What do you mean by being your own policies?

A. We are supplied with pads of policies of all kinds and we are a policy-writing agent with no connection with the branch office in casualty lines.

Q. That is always the case with a general agent, and frequently the case with agents who are not general agents, isn't it, taking the companies by and large?

A. It is in the fire business, but in casualty and, referring specifically to the Travelers, they have very few policy writing agents. Nearly all the policies are issued in Hartford or at the branch office in Richmond.

[fol. 665] Q. Of these 80 stock casualty and surety companies that are admitted to Virginia and which are foreign or alien companies, only some ten or twelve of them have branch offices in Virginia, according to Mr. Boswell's testimony a few days ago. That is generally correct, isn't it?

A. Yes.

Q. And as far as the other seventy approximately are concerned, without branch offices, they have many agents scattered around the state, licensed as resident agents who have full underwriting authority, subject to the general rules and regulations governing them, don't they, just like you do?

A. I think, from my observation, the great majority of them write the policies at the home office of the companies who have no branch offices in that state.

Q. Can you name me a general agent of the Fidelity & Casualty Company in Virginia, a general agent of the Employers Liability, a general agent of the Maryland Casualty, a general agent of the U. S. F. & G., or a general agent of any other prominent company that doesn't have authority to write policies? Casualty policies, I am talking about.

A. I am not absolutely posted on that point and what I said is just an impression.

Q. You know you can go over to Owen Wilson's office tomorrow morning and get your automobile insured and he can give you the policy in five minutes, don't you?

A. Yes, he is a policy-writing agent.

[fol. 666] Q. And you know that is so of Gibson, Moore & Sutton, don't you?

A. I would say this, though, that he can do that for probably one company he represents but not for all the companies he represents. For instance, I can't do it for the Fidelity & Casualty or the Aetna, both of which companies I represent, but I can do it for the Travelers.

Q. You are not a general agent of those two companies, are you?

A. No, I am a resident agent,

Q. You are a local agent?

A. Local agent or resident agent.

Q. Straus & Sons can do it, can't they?

A. No, I don't think so. All of their policies are issued in the branch office.

Q. Their casualty insurance policies?

A. Yes.

Q. With what company?

A. Travelers.

Q. Do not Straus & Company represent anybody but the Travelers among the casualty people?

A. No other casualty company that I know of with the possible exception of one other company for plate glass.

Q. Gibson, Moore & Sutton—can they write policies?

A. Yes, they write policies for the Maryland Casualty.

Q. Can DeJarnette write them for the Employers Lia-

[fol. 667] bility?

A. I don't know.

Q. I wonder if we couldn't settle this little uncertainty that seems to exist between us by your saying that you don't mean to state that it is a uncommon thing for general agents of casualty and surety companies in Virginia to have authority to bind their company on casualty risks. Won't you admit that?

A. I think they do have authority but the question we have been discussing is whether they actually issue the policy.

Q. Did you prepare the endorsements on the contract forms?

A. In connection with this public liability case?

Q. Yes.

A. Many of the endorsements we prepared.

Q. Was the rate to be charged determined by you or at the home office?

A. The rate was determined at the home office after negotiations by me with them as the risk covered in very, very many states.

Q. In what state and by whom was the contract issued?

A. By the company at Hartford.

Q. What did the company do with it?

A. Sent it to me for delivery.

Q. And you delivered it here in Richmond?

A. Yes.

Q. Where was the premium paid?

A. Richmond.

[fol. 668] Q. Where has the policy been held since its issuance?

A. By the insured.

Q. How long has the contract been in effect?

A. A number of years.

Q. How many different properties are now covered by it?

A. I would guess, without actually counting them or keeping that information in hand some 800.

Q. Upon how many occasions have the services of local commission agents in the localities of the coverage outside of Virginia been furnished to the assured under this contract at your request?

A. I think about twice.

Q. What did you get people to do who were local commission agents in other states?

A. They gave me information on which endorsements were made covering repairs or improvements or construction questions.

Q. You mean to say that the company either altered a building or repaired a building and that you got a local commission agent somewhere to tell you the nature of those repairs instead of your getting up and picking up your hat and walking two or three hundred yards and seeing the plans and seeing the bills and talking to the man that had the repairs made?

A. I did both, but the main reason for calling in the local agent was to get him to secure insurance from the contractor to cover both his interest and the policyholder's interest and I felt that they could do that better than I could by correspondence.

Q. You mean that the company which owned this store or apartment house, or whatever it is, was fixing to change [fol. 669] the thing and they told you they were fixing to do it before it had started?

A. And gave me the particulars, as far as I knew, at their home office.

Q. And then you decided that that furnished an opportunity to contact that contractor and get him to place certain insurance protecting his casualty risk while he was doing that work?

A. And the owner of the building, too, jointly.

Q. What sort of insurance did you suggest to your local correspondent that he get the contractor to place with him?

A. Both contingent and direct liability covering both interests, his own and the interest of the owner of the building.

Q. And that involved an additional premium payment for the protection of the liability of the contractor?

A. Yes.

Q. And the local agent got a part of that but he allowed you a part of it?

A. No, I don't recall that I got any commission in either case.

Q. Do you recall whether you did get any commission in either case?

A. I am positive I did not get any commission but while the contractor's part of the premium was additional insurance the main cause for my act was to see that the owner was properly protected.

Q. What did that local commission agent in the locality do for you?

A. To simply provide the proper coverage and report to the local representative of the owner on the ground so that they would know they were properly protected.

Q. You mean under the terms and conditions of this particular liability policy that the assured here in Richmond [fol. 670] wasn't protected for liability arising from the making of repairs?

A. Not repairs, but reconstruction. One case was, I believe, entire wrecking of the building and turning it into a filling station or something like that.

Q. What was there that you couldn't find out about what he was going to do sufficiently to enable you to write that rider here and give him that coverage?

A. It might have been possible but the principal expense and all the other items involved in the coverage were local matters and I felt that it could be attended to there better than I could attend to it.

Q. The people here that ordered the work done had it done on contract, didn't they? They didn't do it themselves?

A. No, they didn't do it.

Q. And they knew the name of the contractor, didn't they?

A. Oh, yes.

Q. And they had a copy of the contract, didn't they?

A. I think so. I know so.

Q. And the plan was laid out either by sketch or by scale of exactly what they were going to do?

A. Yes.

Q. And you could tell here what the contract price was just as well as the local agent in the locality could find out what it was going to be from asking the contractor, couldn't you?

A. Yes. I could get that information here, but in one case it was a cost-plus proposition and in that kind of a case I felt it was better to be handled there with the local representative of the owner and the contractor.

[fol. 671] Q. How could the local agent find out any more about the cost of the job if it was a cost-plus basis than you could find out? Do you mean there was no limit on what the cost should be?

A. I don't remember that there was any distinct limit but I presume that there was.

Q. Did the additional premium charge for the rider vary with the cost?

A. Oh, yes, it always does.

Q. Was that rider prepared before the work started and put on the policy, giving permission to do it?

A. I don't know whether it was actually prepared before the operation commenced but we bind it immediately on receiving notice from the owner.

Q. Under what terms was it bound? Was it bound in terms that you ascertained and determined here or was it bound in terms that were determined by that local agent?

A. It was bound on information they could get but subject to adjustment on conclusion.

Q. When you say "they" you mean the people here in Virginia?

A. Yes.

Q. And you bound it that way?

A. Oh, yes.

Q. Then you didn't communicate with this local agent, as I understand it, until after you had already bound it?

[fol. 672] A. I think that is correct.

Q. And what did you ask that local agent to do? Did you send him a copy of the binder and ask him to tell you if there was anything wrong in it?

A. Oh, no.

Q. Then when did he commence to work? At the expiration of some binder period?

A. Oh, no.

Q. You haven't made it at all clear to me yet, Mr. Tabb, and perhaps you can make it more clear, at what stage you got that local agent into the matter and what you said to him in the first letter that you wrote him about what you wanted him to do.

A. In one case, Mr. Christian, we issued no rider here on their policy. We had the entire coverage handled by the local man, jointly covering both interests.

Q. And you got no part of the commission?

A. And we got no part of the commission and had nothing more to do with it except that we were informed the coverage had been arranged.

Q. Then after that building had been finished and the repair work had ceased, did your policy cover the thing from then on?

A. Oh, yes, subject to endorsement after we inspected it and saw what changes required a change in the premium.

Q. And you didn't need the services of this local agent to get that inspection made and to get these changes determined?

A. No, sir.

[fol. 673] Q. In that case, as I understand it, instead of putting a binder on that policy to enable that repair work to be done and then, at the termination of the repair work, have the company inspector inspect it and determine a proper rider and a proper premium, you decided not to work it that way, but to let this local agent issue a separate policy to protect your assured as well as the contractor while the work was going on and then, after its completion, you took it up again as a permanent thing. What was the advantage to you or to the assured of you working it that way instead of by the binder method?

A. I don't know that there was any particular advantage except that it got the contractor properly covered which is always difficult to do by correspondence and it wasn't sufficiently large for me to justify a trip that distance. It was a simpler way to handle a construction or wrecking risk and it is constantly done that way. I don't know whether the contractor paid the premium out of his profit or whether

the owner of the building shared it or not. That seemed to be the simplest way to handle it.

Q. Had your assured here in Richmond asked you to see that the contractor had proper insurance?

A. Yes. I don't know but what I made the suggestion that I would do it and I would assume that responsibility or rather that effort. I don't know that it involved any responsibility.

Q. In that second case about which you spoke, did you use a rider there or did you handle that the same way you did this one with a separate policy covering both your assured and the contractor during the period of construction?

[fol. 674] A. I don't remember that we ever covered the contractor. I don't recall that we have ever done it.

Q. I thought you had two cases and on one of them you didn't use the binder method. Did you use the binder method in the other case?

A. Yes. You see, if they let a contract for what might be repairs and might be construed as ordinary repairs not covered by policy, for safety, we would issue an endorsement covering that operation, based on the cost to the insured, and usually that is on a flat basis, guaranteed, and not on a cost-plus and we would issue an endorsement and tell them to have their local representative see that that contractor carried insurance also.

Q. And the reason in this one case that you didn't do that was that it was practically a demolition and the addition of a new building?

A. That is it.

Q. Did that commission agent get any money out of your assured for his transaction? You don't know, I think you said.

A. I don't know. If they paid any part of the premium, he did, but I don't know who paid the premium.

Q. Why was it you didn't, or shouldn't, with propriety, ask for part of that commission as the originating and real producing agent?

A. I think I could have fairly asked it, but it wasn't a big amount and I never discussed that. It may be possible that I got some commission but I don't think I did.

Q. But that agent down there did get a part of the commission out of the premium for that coverage during the [fol. 675] brief time of that construction work?

A. Yes, sir.

Q. Did you share with that agent also the commission that you got for the original and main coverage on that location?

A. No, sir.

Q. How did this second agent get his compensation? Didn't you say there had been two occasions when you had called on local agents?

A. Yes.

Q. How did the second one get his compensation?

A. I think that also involved a bond which he wrote.

Q. For the contractor?

A. For the contractor and the owner.

Q. That would be a bond on which the owner was the obligee and the contractor was the principal obligor, wasn't it?

A. That is right, yes.

Q. And he furnished the bond to the contractor in order to enable the contractor to comply with his obligation, to bind his performance of the contract?

A. Yes, that would be the reason for the bond.

Q. Did you pick out the local commission agent in these cases or did the contractor in one or both cases designate the agent?

A. I think I used the branch office of the Travelers for the name of the agent, as I remember it, in both cases.

Q. And the contractor was agreeable to let this second agent get the commission for furnishing his bond?

A. I understand so.

[fol. 676] Q. And the Travelers, pursuant to its agreement to follow the declaration of principles, just turned that over to a branch office commission agent and let him act as the producer?

A. I don't remember, Mr. Christian, whether they turned it over to a branch or whether there was a branch in this city, or not.

Q. It might have been a Travelers general agent?

A. I might have been that, or it might have been a straight agent like Julius Straus here.

Q. In any case, some commission agent got a commission for writing that bond?

A. Yes, sir.

Q. And that man did not get any part of your original commission for writing a public liability policy covering in that location?

A. No.

Q. Did you have any occasions during the life of this contract to call on the claim department of the Travelers for its engineering or safety of inspection department employees to furnish any service of any sort to the assured?

A. Oh, yes, we frequently call on the inspection department and also the claim department.

Q. When you call on them do you call on the Richmond man, Mr. Murphy, or Mr. Davison?

A. Usually, and he transmits our requests to the proper branch office in the state where the risk is located.

Q. What do you call on these men like Davison and Mur- [fol. 677] phy to do for this assured in these other states?

A. I call on Inspector Murphy to secure an inspection which fully describes the risk and give us the data which goes also to the company on which to make any corrections in the coverage if something new has been added or an elevator installed.

Q. I am not talking about practice and custom. I am [fol. 678] still talking about this risk and occasions when you actually did call on Murphy.

A. I am giving you that.

Q. You say you have called on him sometimes when an elevator has been installed to inspect it and let you know how to rate it.

A. Well, not so particularly to rate it. We could do that here, but to see that the elevator is insurable and in good shape and report to the company so that they could issue the endorsement which is done in this case largely at the home office.

Q. And then you temporarily bind that pending his inspection and report when the formal rider is issued with the premium precisely determined.

A. We have an automatic binder.

Q. Then Mr. Murphy would get the engineering department in the state of coverage to make that inspection and report to him and he would report to you; is that right?

A. Sometimes it comes to him and sometimes it goes directly to Hartford and they send it to me from Hartford.

Q. And then if that engineer claims that something is wrong with that elevator you take it to the assured and tell him about it and try to get him to get it fixed; is that right?

A. I not only try to get it fixed but I do get it fixed.

Q. And if they won't fix it then you would tell them the

plain facts that the company couldn't carry that elevator risk, wouldn't you?

A. I might go that far, but those occasions are right rare.

[fol. 679] Q. But you have had those things come up in this particular risk you are talking about?

A. No, not to the extent of threatening any cancellation.

Q. I don't mean threatening cancellation but having inspections made and reports made.

A. We have constant inspections and reports.

Q. And sometimes there are recommendations for changes made which you have got this assured to conform to?

A. Absolutely.

Q. Have any of those recommendations been made as a result of inspections in regular routine which were not special inspections that you had made?

A. Yes, many of them are the results of routine inspections under general instructions to inspect every new location added to the policy.

Q. And the assured has to give you notice of those things so as to enable you to get Mr. Murphy to have a man in the proper state make the inspection?

A. Right.

Q. Does this contract cover many locations in Virginia among the 800 all told?

A. Yes, quite a number.

Q. Will you say 15 or 20 or more than that?

A. I would say, roughly, more than that.

Q. Scattered all over Virginia or are they all in Richmond?

[fol. 680] A. Scattered all over Virginia.

Q. And you just tell Mr. Murphy to go and make the inspection and he has one of his engineers go and make it and report back to you and you report to the assured and oftentimes he makes an inspection and discovers the need for a change without your having asked for it?

A. Yes, he does and then he reports it to me for action with the assured.

Q. Have you had any occasion to make any address on safety to the elevator operators or the building superintendents or whatnot of this assured all over this territory?

A. No, sir, because there are comparatively few elevators concerned and they are in very widely scattered states.

Q. But they are in hotels, and apartments and store build-

ings, aren't they, and they all have elevators, or many of them?

A. Yes, but this class of property does not have many elevators.

Q. Have you made any addresses to the Virginia employees of this assured who operate these buildings or supervise their operation?

A. We have made no addresses. We have talked to superintendents and people in charge of the buildings.

Q. Throughout the State of Virginia?

A. I haven't personally done that anywhere but in Richmond.

Q. How many people were at that meeting?

[fol. 681] A. Oh, it is usually one individual or two, being all that have any contact with the risks of the building.

Q. You mean in this particular case we are talking about involving these 800 risks, some of the risks are right here in Richmond and that you have sometimes gone away from your office up to the risk and talked to the superintendent there or to the elevator man about the way he operated?

A. Yes, more particularly the main building of the proposition because this policy owner covers rented property, for the most part, where the owner has contingent liability only as owner and the tenant has the direct liability.

Q. Have you had the president of that company write any letters to any of the operators of these properties?

A. We have had the manager of the properties write to real estate agents and others who have charge of the buildings in the various localities.

Q. You have not had him go around and make speeches, though?

A. Only when he goes personally and I have asked him and he has done it, talked to the persons who have control of these buildings.

Q. Tell me, please, in what respects this assured has suffered because of you being the producer of this contract covering in these numerous states and local agents therein not having received at least 50% of your commissions on this risk?

A. I wouldn't say that they had suffered any. If I thought so I would tell them.

[fol. 682] Q. You don't think there has been any need of local agent's services in this risk at all?

A. There hasn't apparently been any.

Q. Do you think your work would have been decreased very greatly if you had given 50% of your commissions in each of these states to some local agent and had had the help of all of those gentlemen, scattered over these 15 or 20 states, in doing this servicing?

A. No, I don't think there would have been much change in the situation because this risk involves little hazard and service is at the minimum on such risks.

Q. Are there any hotels among these 800 risks?

A. I think there are several which are leased to corporations or responsible operators.

Q. Any apartment buildings?

A. A few.

Q. Any store properties?

A. Yes, small stores.

Q. Any garages?

A. I think there are very few.

Q. Any churches?

A. No, I think not.

Q. There are plenty of residences, I guess?

A. Mostly residences.

Q. And two or four family residences?

A. Right.

Q. And that is the generality of it—single residences, two or four family residences and merchandise stores?

[fol. 683] A. Right.

Q. If this had been fire insurance instead of casualty insurance, this case we are talking about, wouldn't you have been just as well able to do everything you have done and get all the commissions and retain them to yourself, or would you have felt that you were required to divide those commissions in order to get the help of people in these various localities?

A. In the case of fire insurance the rating of the buildings and other things enter into the fire insurance business, including custom, which would have required a division of commissions with local agents.

Q. And you would have felt justified in associating those local agents with you and dividing up the commissions without regard to custom and as a matter of your own interest and the interest of the assured, would you not?

A. Well, of course, it is hard to distinguish between what you feel and a custom. We have lived so long under the fire insurance custom that it has become a sort of second

nature and works well and by having the same rule applied to property in your locality as applies to the other fellow's property we figure that it sort of evens up; the commission we receive.

Q. In any case, if this had been a fire risk you would have availed yourself of the services of the local people who write the policy?

A. I might have, yes—wait a minute. I might have with the hope of establishing friendly relations with these agents that might redound to our benefit on business they might have in Virginia.

[fol. 684] Q. Do you think that the agents in the 14 or 15 states, whatever the number, where these 800 properties are, would be better qualified than you to find places where this insurance coverage should be improved and that if you had had those local agents in these various localities they would have improved this coverage in a manner that you have not improved it?

A. That is a possibility because I don't claim to be as well qualified to write business in other states as I am in Virginia.

Q. Why wasn't it your duty then, if that word "possibility" means to indicate a real, practical chance that that is so, to associate these people with you and share your commissions with them for the good of your assured?

A. Well, of course, that is a matter that we leave largely to the insured, or, I must say, we don't bring out a matter that would cause us a severe loss when there might not be any result and we can't go into those considerations when we feel that our assureds are abundantly able to do it themselves.

Q. All right. If your assured had suggested the propriety of your sharing these commissions with the local agents in these various vicinities and had pointed out to you that the local agent could possibly furnish service, that it would be helpful to the assured at various times and it would help its good will in these various communities to have a local agent there who was a booster of the company, would you have sympathized with that viewpoint?

A. I think it is possible I would. I certainly wouldn't offer any great objection to their ideas along that line.

[fol. 685] Q. And if they did that you would rather have taken the business and handled it for half the commission you actually got than not to have gotten that half, wouldn't you?

A. Certainly. That is perfectly true.

Q. Have any of those local agents in these states been writing you to get your consent to come to Richmond and talk to this company and try to get associated in that business with you?

A. No, none of them.

Q. Have any of them solicited your assured to take that business away from you and turn it over to them on the theory that the assured needs a resident local agent to protect its interest in each of these various localities?

A. I don't think they have.

Q. Would you be sympathetic to that and if one of these agents in one of these states did write in here and say he wanted to come to Richmond and get you to take him up and talk to the president of this company on the subject of his acting along with you in his locality with reference to this business, would you give him a warm welcome and gladly take him up there and do what you could to expedite his negotiations?

A. I think if he could show me where my assured would benefit materially from such an act, I would be in duty bound to discuss it with my policyholder.

Q. Wouldn't you think that his actual contact, which is so imperative, with the physical conditions of these risks, would be a manifest thing, and you would have to see it would be to the advantage of your assured for such a local agent to have it?

[fol. 686] A. No, that development has never arisen in such degree as to make that supposition at all conclusive.

Q. I thought those local contacts were always imperative.

A. I did not so state and especially on a risk of this character.

Q. I hate to take you into the workmen's compensation field and I don't want to embarrass you by asking you about too many of your risks so that you think I am prying too much in your business, but isn't it a fact that you are handling compensation business that is covering in places hundreds of miles from the City of Richmond?

A. Yes, I cover such risks.

Q. Are you splitting your commissions fifty-fifty in all of those cases with some local agent?

A. No.

Q. Aren't there a good many of them where you are not giving any local agent anything?

A. Yes.

Q. If you thought that it was imperative that the assured ought to have the benefit of a man with local contacts with those properties and plants, and who is a patron of those plants and who would have large local influence, wouldn't you tell your assured that you felt he should require you to associate such local agent with you or else without telling your assured that, go ahead and form that association?

A. No, I don't think it is encumbent upon me to go that far unless the occasion arose which made it evident.

[fol. 687] Q. Or unless the assured required it of you?

A. Yes, or unless the assured required it of me.

Q. However, Mr. T. Garnett Tabb might write his public liability business or his automobile fleet business or his workmen's compensation business and whether or not he feels that his assureds, where he is the producing agent, ought to have the benefit of the local agent's time services, you are satisfied that all of these local assureds that deal with Washington, Baltimore and New York agents need the services of some Virginia resident agent, aren't you?

A. I think if I were in charge of that I would investigate very fully that improvement in service.

Q. Do you say on this record that your workmen's compensation insureds, with their coverages more than 100 miles from Richmond, dealing with you as the producing agent, would be well advised to require you to associate somebody in the vicinity of the risk and that while you couldn't perhaps be expected to suggest that to them, that they are suffering because you haven't suggested it to them?

A. I have no actual evidence of their suffering.

Q. Is there any reason to think then that you would ever see any actual evidence of other assureds suffering who, instead of dealing with T. Garnett Tabb, deal with a Washington, D. C., agent or a Baltimore agent and place with him a workmen's compensation risk covering across the line in Virginia? I am trying honestly and frankly, Mr. Tabb, to see what is the position of yourself, as the Dean of this [fol. 688] organization that has perpetrated this law on us. I am trying to get at the right and wrong of this thing and I want to know.

A. I don't claim to be the Dean of the agents in the state. I still think that an able agent in any state can render material service to a non-resident owner of that business.

Q. When you use the word "able", do you mean any

agent who is able to satisfy the statutory requirements of the Virginia Insurance Department for being licensed as a resident agent?

A. I think the word "able" is subject to some comparative degrees and I have no doubt that any agent licensed under the Virginia Statute would be in position to furnish some degree of service that might be of value to the policyholder.

Q. Why is it that that isn't so with the risks where you are the producer if that is so with the risks where you are not the producer but would like to share in the producer's commissions? That is what I am trying to get at and I think that is the crux of this case.

A. I don't claim that one agent ought to have an advantage over another in different states and I can see that this law has an effect that may injure me for the benefit of other agents, or it might injure another agent for my benefit, but I think the sum total of the law is beneficial, both to the policyholder and the general rank and file of agents in giving consideration to their claim on business in their own vicinity.

Q. Coming back to this risk with these 800 coverages, you have said, I think, that you didn't think that risk suffered any by your not having local agents associated with you.

[fol. 689] A. I haven't been able to find where it suffered.

Q. Haven't you got some workmen's compensation risks in states other than Virginia where you are sole producing agent?

A. Certainly.

Q. And you haven't associated anybody in those states with you in giving them half the commission, have you?

A. No, sir.

Q. Do you think those assureds, if they were fully and frankly and faithfully served by you and by their officers who have charge of their insurance matters, ought to require you to associate resident agents in those other states with

[fol. 690] you in that business?

A. I think they could find reasons why it would be desirable.

B. But you haven't seen fit to disclose those reasons to them, as I understand it, and argue to them that they ought to make you give up the fifty per cent of the commission and require you to make those associations?

A. No, we endeavor to do everything possible to furnish

an equal service and the Travelers, through its service, helps us to do that.

Q. Now you are coming into agreement with me about something which has puzzled me from the first, that you and I should appear to be at disagreement about. Of course, the answer from my standpoint is that you have the benefit of the Travelers claim service and engineering service and you don't need any local agent in these various states and I am glad you have come around to that, if that is true, and if we are in agreement about it.

A. I have never indicated, as far as I know in my testimony, that I didn't regard that service very highly and of great value to the agent and me particularly.

Q. Well, isn't it, as a matter of fact, to a producer like yourself a wholly adequate thing to protect the interest of your assured without adding on some fifth wheel in each of those states to the transaction? Isn't that the true ground on which a man of character, such as yourself, can continue to represent these assureds and not advise them that their interests require them to get local agents in all of these different spots?

[fol. 691] A. Yes, my personal service, I think, has proven satisfactory to the clients of my office.

Q. But I ask you isn't the fact that you have got the engineering and claim service of the Travelers the thing that keeps it from being your duty in honor to get this local association?

A. Of course I use the engineering and claim service of the company which is a part of the value of the policy on which I sell it.

Q. And am I not right in attributing to you the conscientious belief that those services are adequate for the protection of the interests of the assured in these various localities where you are not personally present?

A. Yes, I think that my services are adequate in these places.

Q. I am not talking about your services; I am talking about the company's claim and engineering services. That is what we are saying is adequate, isn't it?

A. No. I make a distinction. I mean that my services, combined with what I require and secure from the company, makes the complete service I refer to.

Q. And a lot of what you describe as services which you require and secure would be forthcoming if you stayed in

your house and cut yourself off from contact with the world, wouldn't they?

A. I don't think it would be as efficiently rendered.

[fol. 692] Q. A lot of it I say would be forthcoming without your requiring it, as you put it, or securing it?

A. Oh, yes, of course some of it would be because it is routine service in some respects.

Q. Is there any reason to think that the ordinary agent of most companies in Virginia is any more honorable a man or more well equipped man than the ordinary agent of most companies or the ordinary broker with a clientele of important assureds in cities like Baltimore, New York, Boston, Chicago, Philadelphia, Atlanta, St. Louis and New Orleans?

A. No, I wouldn't draw any unfavorable comparison.

Q. Could not they get just as much help toward furnishing adequate service to their assureds from the claim and engineering departments of the Travelers that the ordinary Virginia agent of the Travelers could get from its claim and engineering department?

A. I think they could get the same service.

Q. Then you think, as a matter of fact, that the Travelers producing agent in a state other than the state of coverage who properly utilizes the claim and engineering service can adequately service the assured, do you not?

A. Yes, my experience with the Travelers is that an agent of ability, located anywhere, can secure adequate and satisfactory service for his policyholders.

Q. Without the association of an agent in the locality of coverage?

A. Yes, without the association of anyone.

[fol. 693] Q. Is there is any need then for this association of agents in the localities, it would proceed, in your opinion, from a difference between the efficiency of the Traveler's claim department and engineering department and the efficiency of the claim and engineering departments of the other company that that agent might be producing for; is that correct?

A. That would be largely true.

Q. Do I understand you to intimate that you are sufficiently informed to be able to say, and that you do say, that there is any substantial difference between the engineering service and the claim service of the Travelers and the engineering and claim service of the Fidelity & Casualty Com-

pany of New York, which difference would prevent what you have just said as to the Travelers non-resident agents being equally true as to an F. & C. non-resident agent?

A. I have no personal knowledge of the efficiency, nature and extent of their service, so I don't care to answer the question.

Q. Would that be true if, instead of the F. & C. I referred to the plaintiff in this case, the Aetna or the plaintiff Maryland or the plaintiff Hartford Accident & Indemnity or Hartford Steam Boiler or New Amsterdam?

Q. Is that so as to the other companies I have enumerated, that you haven't sufficient information to want to make a statement?

A. Yes, I would answer the same way, that my actual knowledge is not sufficiently accurate to make a statement on the subject.

[fol. 694] Q. Isn't it a thoroughly common thing for insurance agents, not at frequent intervals because, of course, they are not bobbing around like floats in the water, but from time to time during their lives, to change their company connections?

A. Yes.

Q. Isn't it a thoroughly common thing for engineers and claim people to change their company connections?

A. I presume so, but the Travelers doesn't seem to have that kind of experience.

Q. There is no secret about the things the Travelers is doing? They are shouting it to the world all the time?

A. They are good advertisers.

Q. And these other companies that I have been talking about are advertising just as well, aren't they?

A. I wouldn't say just as well, but I again don't want to draw any odious comparisons.

Q. I mean if the Travelers has any deep secrets about handling claims or handling inspection work, in the course of human events, it is entirely likely that its leading competitors would find out about it, isn't it?

A. They might, but I don't think anything I could say on that subject would illuminate the court.

Q. And if they thought the Travelers had methods superior to theirs and which had been demonstrated to be superior, they would have reason to consider the adoption of those methods in lieu of their inferior ones, would they not?

A. They might but again I am totally unable to answer that question.

[fol. 695] Q. I come now to the Century Indemnity Company and ask you about it what I have asked you about the other companies I have named. Do you have any information about the claim service and inspection service which it purports to furnish and does furnish?

A. I have none.

Q. And, for all you know to the contrary, its agents might be able to get the same help from it in these directions that you get from the Travelers; is that correct?

A. I have no information on the subject to form an opinion.

Q. You do know that the Travelers writes about one-seventh in dollars of the total casualty and surety premiums resulting from Virginia coverage, don't you?

A. I haven't seen these exact figures, but I assume Mr. Christian quotes them from some basis he knows is correct.

Q. And the U. S. F. & G. and Maryland and Aetna and F. & C. write about half what the Travelers does, according to your general understanding, don't they?

A. Yes.

Q. And the New Amsterdam and Employers write about a fourth of what the Travelers does, don't they?

A. You mean in Virginia?

Q. In Virginia?

A. I didn't think they wrote as much as that.

[fol. 696] Redirect examination.

By Mr. Staples:

Q. Mr. Tabb, how many persons or partners in your office, or is it a corporation?

A. Three, Messrs. Tabb, Brockenbrough and Ragland under a partnership agreement.

[fol. 697] Q. How many people do you have employed in addition to the partners?

A. Nine, and, of course, this does not include subagents and solicitors.

Q. When it comes to a question of what service might have been rendered with reference to any particular policy or contract in your office, you naturally wouldn't have personal knowledge of all the service that is rendered if it

happened to be rendered by one of the other partners or employees of the office, would you?

A. No, I would not.

Q. I wish you would state what is the organization known as the Southeastern Underwriters Association?

A. My understanding of this organization is that it is composed of about 200 stock fire insurance companies operating in the southern states south of the Potomac River and has been in existence for many years, with headquarters at Atlanta, Georgia.

A. (Continuing) I understand this association was originally known as the Southeastern Tariff Association which was formed in the year 1882.

Q. Some question was asked you by Mr. Christian as to the service an agent might possibly be called on to perform in connection with a supersedeas bond or other bond of that type. I will ask you whether or not it is frequently the case that the bonding company requires the principal of that bond to put up collateral security to indemnify the surety or bonding company against loss on the bond?

[fol. 698] A. Yes, this is required in many cases and the agent is supposed to secure the collateral and otherwise arrange for a satisfactory basis before the company assumes the liability.

Q. Isn't it a fact that, due to changing conditions and values of the collateral deposited, there might be a desire on the part of the company for the deposit of additional collateral or there might be a desire on the part of the principal of the bond to withdraw part of the collateral or change the form of his investment and substitute other collateral?

A. Yes, all of this may be required.

Q. In the event of anything of that kind happening would the agent naturally be called on to take part in the transaction and render some service in connection with it?

A. Certainly, the agent is supposed to look after all dealings between the company and the insured under the bond.

Q. If an agent writes a Fidelity bond to insure the employer against loss from an employee, is it not a part of the service of the agent, if, in the course of the agent's experience, he learns of any improper habits of the employee, such as extravagance or drinking or gambling or anything of that kind, to report this to the employer and also to the insurance carrier?

A. Personally I have never had occasion to perform this service but I understand it has been performed and I feel confident that any agent rendering proper service would perform this service.

[fol. 699] Q. I believe you stated that in these large countrywide risks in which the assured is what is generally known as a national corporation, such as a chain store or chain of theaters or a manufacturing company with plants scattered throughout the country, the local Virginia agent would have no reasonable opportunity of contact with the officers of that national corporation, which is a prospective assured, with a view to negotiating the Virginia coverage? I wish you would state what is your experience along that line.

A. Most of the cases of this character handled in my office have been where the headquarters of the corporation are in Virginia. We have been associated on other cases with New York and other brokers in handling such class of business, not only on their Virginia operations, but operations in other states. We have made no great effort to solicit this class of business where the headquarters were outside of Virginia and only a small portion in Virginia unless we could associate with ourselves a resident broker at the headquarters of the corporation.

Q. Why have you not made an effort to secure such business from corporations with their headquarters in New York and other large cities?

A. I stated in such cases we usually associated with us the resident agent in New York or other city, feeling that they would have more influence and a closer personal contact. We have secured business of this kind direct from out-of-state corporations but the chances of success under such circumstances are not very great unless, under some peculiar circumstances, you have a personal touch with some prominent official of the company.

[fol. 700] Q. Mr. Christian asked you about changes which might be made in various types of insurance contacts which would result in an increase in the premium and an increase in your commissions and implied that the only incentive the Virginia agent would have in connection with such changes would be to increase his compensation. I will ask you whether or not it isn't frequently the case that the

changes suggested by the agent bring about a reduction in the premium and hence a reduction in his compensation?

A. Yes, I would say it is about fifty-fifty, especially during the last few years because of reduction in rates and, therefore, return premiums and reduction in advance premiums, and, of course, the agent's compensation is entirely based on the amount of premium so a return premium or reduction in premium causes a loss of commission to him.

Q. Mr. Christian asked you about these jewelry bonds, that is, to protect the insured against loss of jewelry. Is that any substantial percentage of the business of your office?

A. No, not in percent of total volume of premiums.

Q. What would be your estimate of the percentage of total volume of premiums accruing from policies of that type?

A. Not 1% of the total volume of premiums.

Q. Mr. Christian asked you some questions as to the relative efficiency and value of the services rendered by the engineering and service departments of the Travelers Insurance Company as compared to certain other companies which he named. I realize your reluctance to make any invidious comparison as to any other individual company but I would like for you to state what, in your opinion, is the answer to that question as applied generally to other [fol. 701] companies and not to any particular company.

A. I am thoroughly familiar with the service, both as to claims and accident prevention, rendered by the Travelers Insurance Company, having been intimately associated with this form of service in several states for almost 45 years. I know their reputation among the public and also among insurance authorities to the effect that they stand preeminent for their efficiency and liberal claim service and their scientific and far-reaching accident prevention work. Their motto, since my association with them, shows this conclusively, being "An accident prevented is a benefaction; an accident paid for an apology." This motto has been emblazoned over their vice-president's door for 40 years or more. On account of their tremendous business they are in position, both financially and as a creed, to render far more superior service than any other company in this line of business.

Q. How many casualty companies did you say were qualified to do business in Virginia?

A. I have never counted them but I understood there were about 60 licensed to do business in Virginia.

Q. Do you know whether any large percentage of these companies maintain any permanent organization in this state to render engineering service?

A. I would say, from my personal observation and as a result of competition, a very small percentage of them maintain local establishments in Virginia for that purpose.

Q. In cases where this service is not maintained by a local service organization, state whether or not, in your opinion, it is necessary for the local resident commission [fol. 702] agent to be more alert and active in his service in securing the sending into this state, if necessary, of numbers of the service organization of the particular casualty company that he represents?

A. Yes, he must be called on for that service and I understand for both inspection and claim service companies send out-of-state representatives in under these conditions.

Q. Who customarily makes the request for that service?

A. The agent.

Q. In your opinion would the combined records of all of the commission fire insurance agents in Virginia reflect an accurate record of the total fire insurance premiums on coverage in Virginia collected by fire insurance companies in cases where the contracts were negotiated outside of the state and prior to the passage of the 1938 Act.

A. Prior to the passage of the 1938 Act, I think the records held by local agents would be very incomplete.

Q. Mr. Christian on his cross-examination spoke of the danger of brokers in New York transferring the policy from a standard Virginia admitted company to some company not admitted to do business in Virginia, from whom he could secure larger commissions than from a regular Virginia admitted company. I wish you would state your opinion as to the attitude of the assured toward a transaction of this kind, if he has knowledge of same.

A. I don't think the non-resident owner of a business in Virginia would allow his insurance to be placed in non-admitted companies as I feel confident he would investigate the difference in service he could receive in the event of a claim under the policy in Virginia.

Q. Do these non-admitted companies have any service [fol. 703] organizations at all in Virginia?

A. None whatever that I know of because my understanding is any service people in the state would be subject to arrest and fine.

Q. Does a policyholder regard it as a valuable right to be able to sue the insurance carrier in the state where the cause of action arises and where the witnesses live who would testify about the transaction?

A. I should certainly think so.

Q. I believe the record shows that there is an organization of insurance companies known as the Association of Casualty & Surety Executives. Do you think it would be a difficult matter for that association to bring home to the large assureds in New York and other cities the existence of any such practice as Mr. Christian has indicated might grow up among the brokers and would have the effect of causing the assured to examine into the question of whether or not the broker is undertaking, for the sake of larger commissions, to place the coverage in less advantageous companies?

Q. If you think your general experience in the insurance business qualifies you to answer this question, I wish you would do so, and state your reasons for you- conclusion.

A. The association mentioned is, in my judgment, very powerful and could reasonably enforce most any regulation they saw fit to require and I think brokers and agents alike would fall in line.

Q. A question was asked you by Mr. Christian as to whether or not the good will which you spoke of which would be built up by a foreign corporation with a local [fol. 704] establishment in Virginia would be confined to the agent buying the product of the local plant or establishment. The record is not very clear whether you intended to confine your testimony with reference to this good will to such acts as are referred to or whether you intended to embrace the general good will which would grow up in a community due to the practice of a company to patronize local businesses and industries. I wish you would state just what you had in mind in that connection.

A. I intended to make my statement clear that, in my judgment, as shown in several cases, an insured having plants in the State of Virginia is very much interested in the good will of the vicinity where the plants are located and this good will would be enhanced by placing their in-

surance through local agents, just the same as making purchases of other commodities through local establishments.

By Mr. Staples:

Q. I believe some discussion was had on your cross-examination as to the relative ability of a non-resident broker and of the local commission agent to render service to an assured. Regardless of whether or not the one or the other is able to render the best service, I wish you would state whether or not, in your opinion, it is to the best interests of the assured that he should have the combined service of both of them or whether either alone would, in your judgment, as a general proposition, be able to afford as efficient and satisfactory results as the two combined.

[fol. 705] A. I thought in my preceding testimony I had made it clear that I felt that the Travelers service in other states where we had risks made it unnecessary to have local agents associated with us but I thought I also stated that there might be occasions arise where the service of a local agent would be helpful and we stood ready to secure it. I emphasized the Travelers service because I feel the Travelers has put us in position to handle country-wide business most efficiently and I think they are one of the very few companies who have made that service possible. Therefore, taking average cases, particularly of other companies, I would state that the association of a broker and local agents would result in very much better service to the policyholder.

Q. Mr. Christian's questions to you on the subject of some contracts which you had covering outside of the State of Virginia assumed a very critical attitude as though you were guilty of some breach of duty to your assured in not associating a local resident agent in these other states. I will ask you whether or not the manner in which you have handled this business isn't in entire conformity with the general practice throughout the country as related to similar types of coverage?

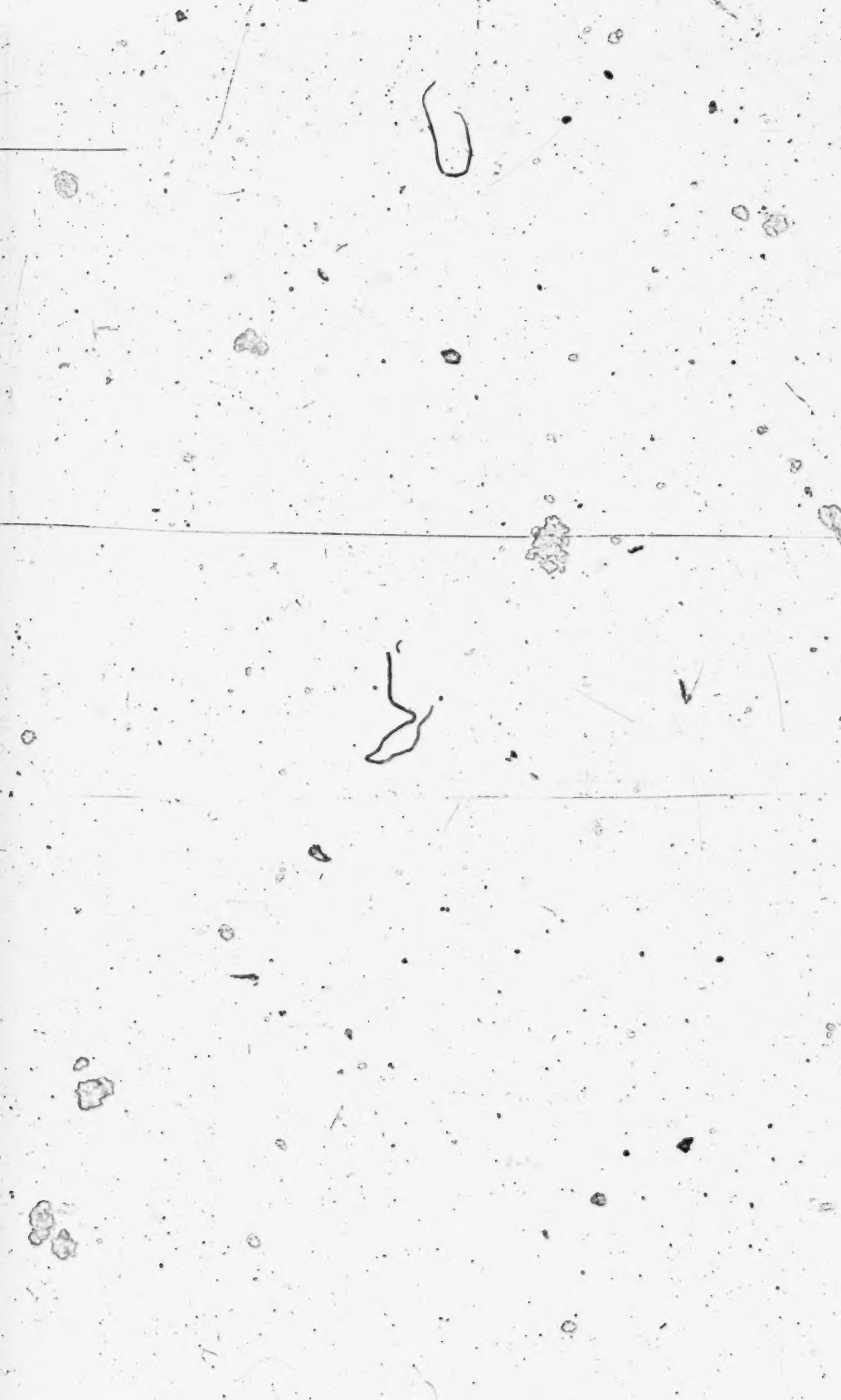
A. Yes, I think it is in conformity with the general practice unless there is some state law which requires association of a local agent. I understand there are some states with such a law and I, therefore, presume the practice in conformity with such law has been pursued by agents and brokers.

[fol. 706] Q. Mr. Tabb, there have been several contracts or policies of casualty insurance introduced by the plaintiffs in this case. The plaintiffs, however, have not introdueed what is generally known as a workmen's compensation policy and I hand you herewith a specimen contract of the Travelers Insurance Company covering a workmen's compensation risk and will ask you to please file that as Defendant's Exhibit C.

A. I will.

Q. I will also ask you to file a similar specimen of contract or policy with reference to boiler and machinery insurance of the Travelers Indemnity Company as Defendant's Exhibit D.

A. I hereby file such a contract.



CLERK'S COPY

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED DECEMBER 15, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

VOL. II

INDEX.

	Original	Print
Tabb, T. Garnett—Continued.		
Re-(re) direct examination	720	516
Moore, T. T.		
Direct examination	723	518
Cross-examination	739	529
Moore, T. T. (recalled).		
Cross-examination	800	566
Redirect examination	807	570
Recross-examination	809	571
Rebuttal evidence on behalf of plaintiffs:		
Chappell, Charles C., Jr.		
Direct examination	787	559
Gibson, John A.		
Direct examination	789	561
Cross-examination	793	562
Redirect examination	796	564
Recross-examination	798	565

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1940.

—5730

Record from D. C. U. S., Eastern District of Virginia—Continued.
Statement of evidence—Continued.
Rebuttal evidence on behalf of plaintiffs—Continued.

	Original	Print
Gallaher, Charles F.		
Direct examination	812	574
Cross-examination	828	583
Redirect examination	832	585
Osborn, William H.		
Direct examination	834	586
Cross-examination	851	597
Redirect examination	862	602
MacNeil, Channing F.		
Direct examination	864	604
Cross-examination	873	609
Izard, James J.		
Direct examination	901	627
Cross-examination	908	631
Redirect examination	965	667
Recross-examination	969	670
Yancey, John G.		
Direct examination	971	671
Cross-examination	981	677
Redirect examination	987	681
Davison, C. M.		
Direct examination	987	681
Cross-examination	1013	698
Murphy, T. A.		
Direct examination	1029	707
Cross-examination	1065	732
Adair, Lewis C.		
Direct examination	1107	762
Cross-examination	1121	771
Sutcliffe, E. J.		
Direct examination	1124	774
Cross-examination	1127	775
Redirect examination	1138	783
Thomas, William C.		
Direct examination	1143	786
Cross-examination	1161	800
Redirect examination	1185	816
Recross-examination	1188	817
Vanderfeen, C. K.		
Direct examination	1189	818
Cross-examination	1195	823
Kerr, Gilbert L.		
Direct examination	1201	826
Cross-examination	1202	827
Anderson, Hale.		
Direct examination	1205	830
Cross-examination	1214	836

	Original	Print
Record from D. C. U. S., Eastern District of Virginia—Continued.		
Statement of evidence—Continued.		
Rebuttal evidence on behalf of plaintiffs—Continued.		
Otis, Courtlandt		
Direct examination	1242	857
Cross-examination	1255	866
Redirect examination	1285	885
Burbank, James A.		
Direct examination	1285	886
Cross-examination	1292	890
Tarbell, Thomas F.		
Direct examination	1298	894
Cross-examination	1303	901
Redirect examination	1305	903
Gesner, M. A.		
Direct examination	1307	904
Cross-examination	1322	915
Redirect examination	1339	928
Offer in evidence—Statement containing information furnished by T. T. Moore	1341	929
Plaintiffs' Exhibits:		
1—National rules regarding acquisition and field supervision costs for casualty insurance	178-a	130
4—Automatic schednle fidelity bond	243-a	179
5—Glass policy	243-b	185
6—National standard automobile liability policy	243-c	192
7—Maximum benefit accident policy	243-d	197
3-c—Agency agreement	1241-a	856
39—Table showing 1938 premiums on casualty business—Virginia	1298-a	896
40—Table showing 1938 premiums on casualty business—Total business	1300-a	899
Defendants' Exhibits:		
"A"—Resolution passed by Board of Directors, February 13, 1939	376-a	279
"C"—Policy covering a workmen's compensation risk	706-a	495
"D"—Policy with reference to boiler and machinery insurance	706-b	502
Letter of attorney for defendants accepting statement of evidence, etc.	1348	935
Praecipe for transcript of record on appeal	1349	935
Clerk's certificate (omitted in printing)	1352	
Statement of points to be relied upon and designation as to printing record	1353	938

EXHIBIT C

The Travelers Hartford, Connecticut

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY UB

The Travelers Insurance Company,

Hartford, Connecticut,

(HEREIN CALLED THE COMPANY)

Does Hereby Agree *with this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:*

One (a) **To Pay Promptly** to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all instalments thereof as they become due,

(1) *To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and*

(2) *For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.*

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

One (b) **To Indemnify** this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Company under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy.

Two **To Serve** this Employer (a) by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and, (b) upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

Three **To Defend**, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

Four **To Pay** all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

Five **This agreement shall apply** to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation. The remuneration of any such designated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

Six **This agreement shall apply** to such injuries so sustained by reason of the business operations described in said Declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

Seven **This agreement shall apply only** to such injuries so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

(For Conditions see Second Page)

This space is intended for the attachment of such endorsements as may be executed as in the Policy provided, and, when so executed and attached, they are to be construed as a part of the Policy.

178044 Ed. July 1933

Specimen

This [illegible]reement is subject to the follo[illegible]g Conditions:

A. The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above defined are undertaken by this Employer but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with **Condition C** hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in **Condition C** hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This Policy may be canceled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancelation shall be effective. The effective date of such cancelation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancelation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancelation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancelation determined as herein provided. If such cancelation is at the Company's request, the earned premium shall be adjusted *pro rata* as provided in **Condition A**. If such cancelation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer, when requesting cancelation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted *pro rata*. Notice of cancelation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

C. The Company shall be permitted, at all reasonable times, if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this Employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

E. As between the employee and the Company, notice to or knowledge of this Employer of an injury or death covered hereby shall be notice or knowledge, as the case may be, of the Company; the jurisdiction of this Employer, for the purposes of any Workmen's Compensation Law covered hereby, shall be jurisdiction of the Company and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

G. No action shall lie against the Company to recover upon any claim or for any loss under **Paragraph One** (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancelation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment, to all rights

premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This Policy may be canceled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancelation shall be effective. The effective date of such cancelation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancelation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancelation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancelation determined as herein provided. If such cancelation is at the Company's request, the earned premium shall be adjusted *pro rata* as provided in **Condition A**. If such cancelation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer, when requesting cancelation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted *pro rata*. Notice of cancelation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

C. The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this Employer while this Policy was in force.

D. The obligations of **Paragraph One** (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured employee covered hereby, or, in the event of his death, to his dependents; and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as

give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

G. No action shall lie against the Company to recover upon any claim or for any loss under **Paragraph One** (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancelation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer, or in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates.

L. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President, a Vice-President, Secretary, or Assistant Secretary of the Company, or by a Registrar of the Company when specially authorized so to do by a printed endorsement attached hereto; nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any other person, be held to effect a waiver or change in any part of this contract. Changes in the written portion of the Declarations forming part hereof (except **Items 2, 3 and 4**) may be made by the agent countersigning this Policy, such changes to bind the Company when initialed by such agent. The personal pronoun herein used to refer to this Employer or to an injured employee or dependents, shall apply regardless of number or gender.

M. The statements in **Items 1** to **7** inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This Policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

In Witness Whereof, The Travelers Insurance Company has caused this Policy to be signed by its President and a Secretary at Hartford, Connecticut, and countersigned by a duly authorized agent of the Company.

Specimen Contract **Specimen Contract**

Countersigned by _____

27806a Ed. July 1933

706a-1

196

For Attachment to

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY when applicable in the STATE OF VIRGINIA to complete the contract as provided in the policy

---

1. The obligations of **Paragraph One (a)** of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other.

Chapter 400, Laws of 1918, State of Virginia, entitled "The Virginia Workmen's Compensation Act"

and all laws amendatory thereof or supplementary thereto which may be or become effective while this Policy is in force.

2. The provisions of Section 20-a of the above cited Act are hereby made a part of this endorsement as fully and completely as if wholly written herein. If this Employer is an owner, contractor or intermediate contractor, as defined in said Section, the Company hereby accepts and includes in this Policy the obligations of this Employer for compensation or other benefits imposed by such Section which are due to his disclosed business operations. This Employer agrees to report or cause to be reported to the Company the remuneration earned by the employees of any such sub-contractor or intermediate contractor, which remuneration shall be subject to adjustment and premium charge in the same manner and under the same conditions as the remuneration of the direct employees of this Employer. If, however, any such sub-contractor or intermediate contractor shall secure the payment of compensation to his immediate employees in accordance with the provisions of the above cited Act and maintain the same during the performance of the sub-contracted work with acceptable proof thereof to the Company, the remuneration of employees so secured shall not be reported to the Company.

3. If this Employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary, Treasurer and other executive officers elected or appointed in accordance with the charter and by-laws of such corporation shall be disclosed and premium shall be paid thereon, subject to a minimum individual remuneration of $30 per week, if the actual remuneration is less than such amount, and to a maximum individual remuneration of $100 per week, if the actual remuneration is greater than such amount. The remuneration so determined of each executive shall be assigned without division to the classification which is applicable to the actual operations in which such executive officer is primarily engaged, provided the remuneration so determined of each executive officer who performs such duties as are ordinarily undertaken by a superintendent, foreman or workman, or whose duties include direct charge of the actual performance of any operations of this Employer, shall be assigned without division to the highest rated classification which is applicable to any such duties undertaken by such executive officer for any part of his time.

4. The Company's liability under **Paragraph One (b)** shall be limited to $25,000 as the result of one or more claims arising from a single accident.

5. It is agreed that the Policy of which this endorsement forms a part does not afford insurance under **Paragraph One (b)** with respect to occupational disease, and that the provisions of **Paragraphs Two, Three and Four** shall not apply with respect to occupational disease for which no insurance is afforded under **Paragraph One (b)**.

6. This Policy is issued by the Company and accepted by this Employer with the agreement that rates of premium are subject to changes to the extent that such changes are approved or required by the State Corporation Commission of Virginia in accordance with the law by reason of (1) any change in the benefit provisions of the above cited Compensation Law which becomes effective during the Policy Period, or (2) any revision of manual rates which becomes effective and applicable during the Policy Period, or (3) the promulgation of adjusted rates by the Workmen's Compensation Inspection Rating Bureau of Virginia in accordance with the rating plans approved by the State Corporation Commission of Virginia. Such changes shall become applicable from and after the date required by the State Corporation Commission of Virginia. The provisions of this paragraph apply to rates expressed in the Policy or any endorsement attached thereto. Such changes, if any, are to be expressed by further endorsement naming the effective date thereof.

THE TRAVELERS INSURANCE COMPANY

45-1788
Virginia

Countersigned by_____
Authorized Representative

L. E. Zacher
President

C-608 6-12-39
PRINTED IN U.S.A.

706a-2

2. The provisions of Section 20-a of the above cited Act are hereby made a part of this endorsement as fully and completely as if wholly written herein. If this Employer is an owner, contractor or intermediate contractor, as defined in said Section, the Company hereby accepts and includes in this Policy the obligations of this Employer for compensation or other benefits imposed by such Section which are due to his disclosed business operations. This Employer agrees to report or cause to be reported to the Company the remuneration earned by the employees of any such sub-contractor or intermediate contractor, which remuneration shall be subject to adjustment and premium charge in the same manner and under the same conditions as the remuneration of the direct employees of this Employer. If, however, any such sub-contractor or intermediate contractor shall secure the payment of compensation to his immediate employees in accordance with the provisions of the above cited Act and maintain the same during the performance of the sub-contracted work with acceptable proof thereof to the Company, the remuneration of employees so secured shall not be reported to the Company.

3. If this Employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary, Treasurer and other executive officers elected or appointed in accordance with the charter and by-laws of such corporation shall be disclosed and premium shall be paid thereon, subject to a minimum individual remuneration of $30 per week, if the actual remuneration is less than such amount, and to a maximum individual remuneration of $100 per week, if the actual remuneration is greater than such amount. The remuneration so determined of each executive shall be assigned without division to the classification which is applicable to the actual operations in which such executive officer is primarily engaged, provided the remuneration so determined of each executive officer who performs such duties as are ordinarily undertaken by a superintendent, foreman or workman, or whose duties include direct charge of the actual performance of any operations of this Employer, shall be assigned without division to the highest rated classification which is applicable to any such duties undertaken by such executive officer for any part of his time.

4. The Company's liability under **Paragraph One (b)** shall be limited to $25,000 as the result of one or more claims arising from a single accident.

5. It is agreed that the Policy of which this endorsement forms a part does not afford insurance under **Paragraph One (b)** with respect to occupational disease, and that the provisions of **Paragraphs Two, Three and Four** shall not apply with respect to occupational disease for which no insurance is afforded under **Paragraph One (b)**.

6. This Policy is issued by the Company and accepted by this Employer with the agreement that rates of premium are subject to changes to the extent that such changes are approved or required by the State Corporation Commission of Virginia in accordance with the law by reason of (1) any change in the benefit provisions of the above cited Compensation Law which becomes effective during the Policy Period, or (2) any revision of manual rates which becomes effective and applicable during the Policy Period, or (3) the promulgation of adjusted rates by the Workmen's Compensation Inspection Rating Bureau of Virginia in accordance with the rating plans approved by the State Corporation Commission of Virginia. Such changes shall become applicable from and after the date required by the State Corporation Commission of Virginia. The provisions of this paragraph apply to rates expressed in the Policy or any endorsement attached thereto. Such changes, if any, are to be expressed by further endorsement naming the effective date thereof.

THE TRAVELERS INSURANCE COMPANY

45-1788
Virginia
C-608 6-12-39
PRINTED IN U.S.A.

Countersigned by_____
Authorized Representative

L. S. Gaches
President

706a-2

NUMBER	BRANCH / PRODUCER	ADDRESS (TOWN AND STATE)	COUNTY	STATE	FILING REQUIREMENTS / COUNTERSIGNED	DATE OF ISSUE / CLASSIFICATION / PREMIUM
UB						

Edition July 1939	RENEWAL	BR. OFFICE APPROVAL	UNDERWRITER CHECKED	ENDORSEMENTS	POLICY: WRITER / CHECKER	EXPIRATION: WRITER / CHECKER
Standard Workmen's Compensation and Employer's Liability Proposal and Declarations	HISTORY NO.	CORRESPONDENCE Yes — No	UNDERWRITER APPROVAL	1788	MAK /	/
					SUMMARY REG.	INSPECTION

Item 1. Name of this Employer Blank Products Inc.

P. O. Address 535-611 Blank Ave., Dover, Tuscarawas County, Ohio

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.
Individual, co-partnership, corporation or estate? Corporation

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from Feb. 15, 1939 to Feb. 15, 1940
at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number. 333 Blank Ave., Richmond, Virginia and elsewhere in the State of Virginia

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following Divisions as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium	
1 See Below					
2 (a) Clerical Office Employees	8810				
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742				
(b) Drivers and their Helpers, including stablemen—if not specifically included in Division 1	7205				
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in Division 1 #45	7380	1,500.	1.12		
Minimum Premium for this Policy shall be $ 19.00		Estimated Advance Premium		Minimum 19.00	

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a

elsewhere in the State Virginia

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS	Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1 See Below			
2 (a) Clerical Office Employees 8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise 8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in Division 1 7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in Division 1 #45 7380	1,500.	1.12	
Minimum Premium for this Policy shall be $ 19.00	**Estimated Advance Premium** Minimum		19.00

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

Item 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—*except as herein stated:* No Exceptions

Item 6. No similar insurance has been canceled by any insurance carrier during the past year—*except as herein stated:* No Exceptions

Item 7. The following signature is authorized and accepted by this Employer as his signature.

Proposal dated _____ Per Blank Products Inc.

Name _____

No. UB _____

Exp. Date _____

27807A Ed. July 1933 PRINTED IN U.S.A.

The Travelers Insurance Company.

Hartford, Connecticut

PROPOSAL FOR STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY

BY

INSTRUCTIONS

This space is to be used as necessary to give: statements of unusual hazards or operations; accessibility of isolated risks; brokerage or local agency situations; names of recent past insurance carriers when new risks are involved; available information respecting past experience record of new risks; any other information which may be of importance in considering the desirability of a risk. The space will be of use primarily in connection with new business.

Declarations.

Number

UB_____

Item 1. Name of this Employer

P. O. Address

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served. Individual, co-partnership, corporation or estate?

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from , to , at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS NOTE: If more than one classification indicate each other by (b), (c), (d), etc.		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1				
2 (a) Clerical Office Employees	8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in **Division 1**	7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in **Division 1**	7380			
Minimum Premium for this Policy shall be $		**Estimated Advance Premium**		

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium [illegible]

individual, co-partnership, corporation or estate?

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from to at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS NOTE: If more than one classification indicate each other by (b), (c), (d), etc.		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1				
2 (a) Clerical Office Employees	8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise .	8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in **Division 1**	7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in **Division 1**	7380			

Minimum Premium for this Policy shall be $ **Estimated Advance Premium**

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

Item 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—*except as herein stated:*

Item 6. No similar insurance has been canceled by any insurance carrier during the past year—*except as herein stated:*

Item 7. The following signature is authorized and accepted by this Employer as his signature.

(Copy of Signature to Proposal)

Proposal dated . Per

27806A Ed. July 1933 PRINTED IN U.S.A.

The Travelers

The Travelers Insurance Company,

Hartford, Connecticut

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY

No. UB

Issued to

Expires

At twelve and one minute o'clock A. M.

Specimen Contract

27806A Ed. July 1933 PRINTED IN U.S.A.

The Travelers

Short Rate Cancelation Table

For Term of One Year

		Per Cent. of Annual Premium
1 day		2
2 days		4
3 "		5
4 "		6
5 "		7
6 "		8
7 "		9
8 "		9
9 "		10
10 "		10
11 "		11
12 "		12
13 "		13
14 "		13
15 "		14
16 "		14
17 "		15
18 "		16
19 "		16
20 "		17
25 "		19
30 "		20
35 "		23
40 "		26
45 "		27
50 "		28
55 "		29
60 "		30
65 "		33
70 "		36
75 "		37
80 "		38
85 "		39
90 "	or three months	40
105 "		45
120 "	or four months	50
135 "		55
150 "	or five months	60
165 "		65
180 "	or six months	70
195 "		73
210 "	or seven months	75
225 "		78
240 "	or eight months	80
255 "		83
270 "	or nine months	85
285 "		88
300 "	or ten months	90
315 "		93
330 "	or eleven months	95
360 "	or twelve months	100

FOR VALUE RECEIVED the interest of this Employer in this Policy is hereby assigned to subject to the consent of THE TRAVELERS INSURANCE COMPANY.

, 19

[SIGNATURE OF EMPLOYER]

Hartford, Conn., 19

THE TRAVELERS INSURANCE COMPANY

Short Rate Cancelation Table

For Term of One Year

	Per Cent. of Annual Premium
1 day	2
2 days	4
3	5
4	6
5	7
6	8
7	9
8	10
9	10
10	11
11	12
12	13
13	14
14	15
15	16
16	17
17	18
18	19
19	20
20	23
21	26
22	27
23	28
24	29
25	30
26	33
27	36
28	37
29	38
30	39
31	40
32	45
33	50
34	55
35	60
36	65
37	70
38	73
39	75
40	78
41	80
42	83
43	85
44	88
45	90
46	93
47	95
48	95
49	100
50	100
51	100
52	100
53	100
54	100
55	100
56	100
57	100
58	100
59	100
60	100
61	100
62	100
63	100
64	100
65	100
66	100
67	100
68	100
69	100
70	100
71	100
72	100
73	100
74	100
75	100
76	100
77	100
78	100
79	100
80	100
81	100
82	100
83	100
84	100
85	100
86	100
87	100
88	100
89	100
90	100
91	100
92	100
93	100
94	100
95	100
96	100
97	100
98	100
99	100
100	100
101	100
102	100
103	100
104	100
105	100
106	100
107	100
108	100
109	100
110	100
111	100
112	100
113	100
114	100
115	100
116	100
117	100
118	100
119	100
120	100
121	100
122	100
123	100
124	100
125	100
126	100
127	100
128	100
129	100
130	100
131	100
132	100
133	100
134	100
135	100
136	100
137	100
138	100
139	100
140	100
141	100
142	100
143	100
144	100
145	100
146	100
147	100
148	100
149	100
150	100
151	100
152	100
153	100
154	100
155	100
156	100
157	100
158	100
159	100
160	100
161	100
162	100
163	100
164	100
165	100
166	100
167	100
168	100
169	100
170	100
171	100
172	100
173	100
174	100
175	100
176	100
177	100
178	100
179	100
180	100
181	100
182	100
183	100
184	100
185	100
186	100
187	100
188	100
189	100
190	100
191	100
192	100
193	100
194	100
195	100
196	100
197	100
198	100
199	100
200	100
201	100
202	100
203	100
204	100
205	100
206	100
207	100
208	100
209	100
210	100
211	100
212	100
213	100
214	100
215	100
216	100
217	100
218	100
219	100
220	100
221	100
222	100
223	100
224	100
225	100
226	100
227	100
228	100
229	100
230	100
231	100
232	100
233	100
234	100
235	100
236	100
237	100
238	100
239	100
240	100
241	100
242	100
243	100
244	100
245	100
246	100
247	100
248	100
249	100
250	100
251	100
252	100
253	100
254	100
255	100
256	100
257	100
258	100
259	100
260	100
261	100
262	100
263	100
264	100
265	100
266	100
267	100
268	100
269	100
270	100
271	100
272	100
273	100
274	100
275	100
276	100
277	100
278	100
279	100
280	100
281	100
282	100
283	100
284	100
285	100
286	100
287	100
288	100
289	100
290	100
291	100
292	100
293	100
294	100
295	100
296	100
297	100
298	100
299	100
300	100
301	100
302	100
303	100
304	100
305	100
306	100
307	100
308	100
309	100
310	100
311	100
312	100
313	100
314	100
315	100
316	100
317	100
318	100
319	100
320	100
321	100
322	100
323	100
324	100
325	100
326	100
327	100
328	100
329	100
330	100
331	100
332	100
333	100
334	100
335	100
336	100
337	100
338	100
339	100
340	100
341	100
342	100
343	100
344	100
345	100
346	100
347	100
348	100
349	100
350	100
351	100
352	100
353	100
354	100
355	100
356	100
357	100
358	100
359	100
360	100

1 day
2 days
or three months
or four months
or five months
or six months
or seven months
or eight months
or nine months
or ten months
or eleven months
or twelve months

_____, 19____

FOR VALUE RECEIVED the interest of this Employer in this Policy is hereby assigned to

_____

subject to the consent of THE TRAVELERS INSURANCE COMPANY.

_____

[SIGNATURE OF EMPLOYER]

_____

Hartford, Conn., _____, 19 ____

THE TRAVELERS INSURANCE COMPANY hereby consents that the interest of this Employer in this Policy be assigned to _____

of _____

[POST OFFICE ADDRESS OF ASSIGNEE]

_____

Secretary.

706a-6

501

The Travelers, Hartford, Connecticut

The Travelers Indemnity Company,
Hartford, Connecticut,

A STOCK COMPANY

(HEREIN CALLED THE COMPANY)

INSURING AGREEMENT

In consideration of $.....premium does hereby agree with

.....

(herein called the Assured)

whose address is.....

respecting loss (.....loss of the kind described in Section II, and.....loss of the kind described in Section IV) from an accident as herein defined to an object described herein, occurring during the policy period which is from.....to.....,

at twelve o'clock noon, standard time, as to each of said dates, at the place where such accident occurs, subject to a Limit per Accident of.....Dollars ($.....),

as follows:

SECTION I To PAY the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Company so elects, to repair or replace such damaged property), excluding (*a*) loss from fire (or from the use of water or other means to extinguish fire), (*b*) loss from an accident caused by fire, (*c*) loss from delay or interruption of business or manufacturing or process, (*d*) loss from lack of power, light, heat, steam or refrigeration, and (*e*) loss from any indirect result of an accident;

SECTION II To PAY the Assured, if loss under Section II is stated above as included but not otherwise, for the extra cost represented by items of expense for temporary repair or for expediting the repair of such damaged property of the Assured including overtime and the extra cost of express or other rapid means of transporting material, but if the Company's payment under Section I is $1,000 or less the Company's liability under Section II shall not exceed an amount equal to said payment under Section I, and if said payment under Section I exceeds $1,000, the Company's liability under Section II shall not exceed $1,000 plus 25% of the amount by which the Company's payment under Section I exceeds $1,000; and the Company's liability under Section II shall be a part of and not in addition to the Limit per Accident;

SECTION III To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; to DEFEND the Assured against any claim or suit alleging such damage unless or until the Company shall elect to effect settlement thereof;

SECTION IV To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I, II and III, if loss under Section IV is stated above as included but not otherwise, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured, including liability for loss of services, on account of bodily injuries (including death at any time resulting therefrom) sustained by any person and caused by such accident, except that the indemnity hereunder shall in no event apply to any liability or obligation under any workmen's compensation law; to PAY, if loss under Section IV is stated above as included but not otherwise, irrespective of the Limit per Accident, for such immediate surgical relief as shall be rendered at the time of the accident; to DEFEND the Assured, if loss under Section IV is stated above as included but not otherwise, against any claim or suit alleging such liability unless or until the Company shall elect to effect settlement thereof; and

SECTION V To PAY, irrespective of the Limit per Accident, all costs taxed against the Assured in any legal proceeding defended by the Company in accordance with Section III or IV, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premium charges on attachment or appeal bonds required in such legal proceedings, and all expenses incurred by the Company for such defense;

PROVIDED the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule.

It is PROVIDED FURTHER that this agreement is subject to the Conditions printed hereon and subject also to the Schedules and endorsements issued to form a part hereof. The Schedules and endorsements attached

Specimen Contract

1-618 Ed. January 1940 PRINTED IN U.S.A.

Travelers Form Policy for Boiler or Machinery Insurance
Copyright 1939 by J. P. H. deWindt

The Travelers Indemnity Company, Hartford, Connecticut

Policy

No.

ISSUED TO

Specimen Contract

Expires 19

respecting loss.....loss of the kind described in Section II, and.....loss of the kind described in Section IV) from an accident as herein defined to an object described herein, occurring during the policy period which is from.....to.....,
at twelve o'clock noon, standard time, as to each of said dates, at the place where such accident occurs, subject to a Limit per Accident of.....Dollars ($.....),
as follows:

SECTION I — To PAY the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Company so elects, to repair or replace such damaged property), excluding (*a*) loss from fire (or from the use of water or other means to extinguish fire), (*b*) loss from an accident caused by fire, (*c*) loss from delay or interruption of business or manufacturing or process, (*d*) loss from lack of power, light, heat, steam or refrigeration, and (*e*) loss from any indirect result of an accident;

SECTION II — To PAY the Assured, if loss under Section II is stated above as included but not otherwise, for the extra cost represented by items of expense for temporary repair or for expediting the repair of such damaged property of the Assured including overtime and the extra cost of express or other rapid means of transporting materials, but if the Company's payment under Section I is $1,000 or less the Company's liability under Section II shall not exceed an amount equal to said payment under Section I, and if said payment under Section I exceeds $1,000, the Company's liability under Section II shall not exceed $1,000 plus 25% of the amount by which the Company's payment under Section I exceeds $1,000; and the Company's liability under Section II shall be a part of and not in addition to the Limit per Accident;

SECTION III — To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; to DEFEND the Assured against any claim or suit alleging such damage unless or until the Company shall elect to effect settlement thereof;

SECTION IV — To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I, II and III, if loss under Section IV is stated above as included but not otherwise, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured, including liability for loss of services, on account of bodily injuries (including death at any time resulting therefrom) sustained by any person and caused by such accident, except that the indemnity hereunder shall in no event apply to any liability or obligation under any workmen's compensation law; to PAY, if loss under Section IV is stated above as included but not otherwise, irrespective of the Limit per Accident, for such immediate surgical relief as shall be rendered at the time of the accident; to DEFEND the Assured, if loss under Section IV is stated above as included but not otherwise, against any claim or suit alleging such liability unless or until the Company shall elect to effect settlement thereof; and

SECTION V — To PAY, irrespective of the Limit per Accident, all costs taxed against the Assured in any legal proceeding defended by the Company in accordance with Section III or IV, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premium charges on attachment or appeal bonds required in such legal proceedings, and all expenses incurred by the Company for such defense;

PROVIDED the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule.

It is PROVIDED FURTHER that this agreement is subject to the Conditions printed hereon and subject also to the Schedules and endorsements issued to form a part hereof. The Schedules and endorsements attached to this policy when it is issued are identified as follows:

Schedule(s) numbered.....Endorsement(s) numbered.....

In Witness Whereof, The Travelers Indemnity Company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut, and countersigned by a duly authorized representative of the Company.

Specimen Contract **Specimen Contract**

Countersigned by.....
Authorized Representative

1-618 Rd. January 1930 706 B 706-b

The Travelers Indemnity Company, Hartford, Connecticut

Conference Form Policy for Boiler or Machinery Insurance—Copyright 1930 by J. P. H. deWindt

CONDITIONS

LIMIT PER ACCIDENT

1. The Company's total liability for loss from any one accident shall not exceed the amount stated as Limit per Accident. The term "one accident" shall be taken as including all resultant or concomitant accidents whether to one or more than one object or part of an object.

BODILY INJURIES

2. If at the time of an accident there is in effect any other contract or provision requiring any insurance company or any association or individual, or body politic or corporate, to pay the Assured or in his behalf or stead, for loss of a kind described in Section IV caused by the accident, the insurance, if any, under Section IV shall not be considered as contributing insurance and shall become effective and applicable only on any part of said loss of the Assured for which there is not then in effect such other valid and collectible insurance. If at such time there is not in effect any such other contract or provision with respect to such loss then the insurance, if any, under Section IV may be applied to any part of said loss.

OTHER PROPERTY INSURANCE

3. In the event of a property loss to which both this insurance and other insurance carried by the Assured apply, herein referred to as "joint loss", (*a*) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the whole amount of such other valid and collectible insurance; or, (*b*) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said loss had there been no insurance under this policy; but this clause (*b*) shall apply only in case the policies affording such other insurance contain a similar clause.

LIMITATION OF PROPERTY LOSS

4. The Company shall not be liable as respects the property of the Assured damaged or destroyed, for more than the actual cash value thereof at the time of the accident. If as respects the damaged property of the Assured the repair or replacement of any part or parts of an object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

INSPECTIONS AND SUSPENSION

5. The Company shall be permitted at all reasonable times during the policy period to inspect the objects and the premises where the objects are located. Upon the discovery of a dangerous condition with respect to any object, any representative of the Company may immediately suspend the insurance thereon by written notice mailed or delivered to the Assured at the address of the Assured, as stated herein, or at the location, as stated in the Schedule, of the object to which the suspension applies. Insurance so suspended may be reinstated by the Company but only by endorsement issued to form a part hereof. The Assured shall be allowed the unearned premium paid for such object, pro rata, for the period of such suspension.

CANCELATION

6. This policy may be canceled by the Assured by mailing written notice to the Company stating when thereafter such cancelation shall be effective, in which case the Company shall refund the excess of premium paid by the Assured above the short rate premium computed in accordance with the Short Rate Cancelation Table printed hereon. This policy may be canceled by the Company by mailing written notice to the Assured at the address of the Assured, as stated herein, stating when, not less than five days thereafter, such cancelation shall be effective, and the Company shall refund the excess of premium paid by the Assured above the pro rata premium for the expired term. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing and whether such notice shall be mailed or delivered the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Cancelation shall not affect any claim for loss from an accident occurring prior to the effective date and hour of cancelation.

NOTICE OF ACCIDENT AND ADJUSTMENT

7. The Company shall not be liable for loss from an accident unless written notice thereof is given by or on behalf of the Assured or claimant to the Company or to any of its authorized agents, as soon as practicable. The Assured shall give like notice of any claim made on account of such accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Assured before repairs are undertaken or physical evidence of the accident is removed, except for protection or salvage. Proof of loss shall be made by the Assured in such form and detail as the Company may require. The Assured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company. In event of disagreement between the Company and the Assured as to the amount of loss on the property of the Assured for which the Company is liable under this policy, the amount of said loss may be determined, if the Assured so elects, by two competent and disinterested persons as appraisers, one to be chosen by the Assured and one to be chosen by the Company within thirty days of the demand of the Assured. The two appraisers shall select a third person as umpire to decide upon items upon which the two appraisers may disagree and, failing for fifteen days to agree upon such umpire, then on request of the Assured such umpire shall be selected by a judge of a court of record in the county and state in which the arbitration is pending. The award in writing of any two of the three said persons shall determine the amount of said loss. The Assured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and the expense of appraisal. The Assured shall not voluntarily assume any liability, make any payment or incur any expense, other than at the Assured's own cost except as otherwise expressly permitted herein, or interfere in any negotiation for settlement or in any legal proceeding, without the consent of the Company previously given in writing, but payment by the Assured of any judicial judgment or claim for any of the indemnity for which the Company would become liable under this policy, shall not bar the Assured's right of action against the Company therefor.

SUBROGATION

8. The Company shall be subrogated in case of payment of loss under this policy, to the extent of such payment, to all of the Assured's rights of recovery therefor and the Assured shall execute all papers required and shall do everything necessary to secure such rights.

SUITS AGAINST ASSURED

9. If a suit is brought against the Assured for loss to which this insurance is applicable, the Assured shall immediately forward to the Company every summons or other process served upon the Assured. The Assured upon request of the Com-

ment of any part or parts of an object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

INSPECTIONS AND SUSPENSION

5. The Company shall be permitted at all reasonable times during the policy period to inspect the objects and the premises where the objects are located. Upon the discovery of a dangerous condition with respect to any object, any representative of the Company may immediately suspend the insurance thereon by written notice mailed or delivered to the Assured at the address of the Assured, as stated herein, or at the location, as stated in the Schedule, of the object to which the suspension applies. Insurance so suspended may be reinstated by the Company but only by endorsement issued to form a part hereof. The Assured shall be allowed the unearned premium paid for such object, pro rata, for the period of such suspension.

CANCELATION

6. This policy may be canceled by the Assured by mailing written notice to the Company stating when thereafter such cancelation shall be effective, in which case the Company shall refund the excess of premium paid by the Assured above the short rate premium computed in accordance with the Short Rate Cancelation Table printed hereon. This policy may be canceled by the Company by mailing written notice to the Assured at the address of the Assured, as stated herein; stating when, not less than five days thereafter, such cancelation shall be effective, and the Company shall refund the excess of premium paid by the Assured above the pro rata premium for the expired term. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing and whether such notice shall be mailed or delivered the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Cancelation shall not affect any claim for loss from an accident occurring prior to the effective date and hour of cancelation.

NOTICE OF ACCIDENT AND ADJUSTMENT

7. The Company shall not be liable for loss from an accident unless written notice thereof is given by or on behalf of the Assured or claimant to the Company or to any of its authorized agents, as soon as practicable. The Assured shall give like notice of any claim made on account of such accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Assured before repairs are undertaken or physical evidence of the accident is removed, except for protection or salvage. Proof of loss shall be made by the Assured in such form and detail as the Company may require. The Assured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company. In event of disagreement between the Company and the Assured as to the amount of loss on the property of the Assured for which the Company is liable under this policy, the amount of said loss may be determined, if the Assured so elects, by two competent and disinterested persons as appraisers, one to be chosen by the Assured and one to be chosen by the Company within thirty days of the demand of the Assured. The two appraisers shall select a third person as umpire to decide upon items upon which the two appraisers may disagree and, failing for fifteen days to agree upon such umpire, then on request of the Assured such umpire shall be selected by a judge of a court of record in the county and state in which the arbitration is pending. The award in writing of any two of the three said persons shall determine the amount of said loss. The Assured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and the expense of appraisal. The Assured shall not voluntarily assume any liability, make any payment or incur any expense, other than at the Assured's own cost except as otherwise expressly permitted herein, or interfere in any negotiation for settlement or in any legal proceeding, without the consent of the Company previously given in writing, but payment by the Assured of any judicial judgment or claim for any of the indemnity for which the Company would become liable under this policy, shall not bar the Assured's right of action against the Company therefor.

SUBROGATION

8. The Company shall be subrogated in case of payment of loss under this policy, to the extent of such payment, to all of the Assured's rights of recovery therefor and the Assured shall execute all papers required and shall do everything necessary to secure such rights.

SUITS AGAINST ASSURED

9. If a suit is brought against the Assured for loss to which this insurance is applicable, the Assured shall immediately forward to the Company every summons or other process served upon the Assured. The Assured upon request of the Company shall aid in effecting settlements, in securing evidence and the attendance of witnesses, and in prosecuting appeals.

SUITS AGAINST COMPANY

10. Suit shall not be brought under this policy unless commenced within fourteen months from the date upon which the accident occurred, except that an action for indemnity payable hereunder as the result of a suit against the Assured may be brought within two years after the termination of such suit; provided that where such limitation of time is prohibited by the laws of the state wherein the loss occurs, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation of time permitted under the laws of that state for such an action.

INSOLVENCY OF ASSURED

11. To the extent only that any indemnity under this policy becomes finally applicable to loss of the Assured from the liability of the Assured to a third person, the bankruptcy or insolvency of the Assured or his estate shall not relieve the Company of any of its obligations hereunder; and if said person or his legal representative shall obtain final judgment against the Assured or his legal representative because of an accident, then such person or his legal representative may proceed against the Company to recover to said extent on the amount of such judgment, either at law or in equity.

CHANGES

12. By acceptance of this policy the Assured agrees that it embodies all agreements existing between the Assured and the Company or any of its agents relating to this insurance. No provision or condition of this policy shall be waived or altered except by endorsement issued to form a part hereof, signed by the President, a Vice-President, the Secretary, or an Assistant Secretary of the Company. The additional or return premium for any such endorsement shall be computed in accordance with the Adjustment Table printed hereon. Notice to any agent, or knowledge possessed by any agent or by any other person, shall not be held to effect a waiver or change in any part of this policy; but changes in the typewritten portions of this policy, if initialed by any Manager, Assistant Manager or General Agent of the Company, shall bind the Company and the Assured. This policy shall be void if it is assigned without the written consent of the Company, but if the death, insolvency or bankruptcy of the Assured shall occur during the policy period, the Assured under this policy, during the remaining unexpired

portion of such period shall be the legal representative of the Assured, provided written notice shall be given to the Company within thirty days after the date of such death, insolvency or bankruptcy.

SCHEDULES

13. The insurance hereunder shall apply only to loss from an accident to the object or objects designated and described in a Schedule or Schedules issued to form a part hereof, bearing the signature of the President of the Company. Such Schedule or Schedules which contain the description of such object or objects, the definition thereof and the definition of accident and other provisions as applicable to the respective objects described in each such Schedule, shall be considered as incorporated in this policy.

This space is for the attachment of the Schedule or Schedules, and endorsements if any.

ADJUSTMENT TABLE

To obtain the additional premium or return premium which may be required for an endorsement effecting a change in any provision or condition of this policy, determine from the Adjustment Table the percentage for the unexpired term of the policy and apply that percentage to the premium that would be required for such change for the full term of the policy; except that if an object previously covered by the policy is added to the policy the additional premium required shall be equal to the amount which was allowed as the return premium on said object if the period between the date of elimination and the date upon which it is added to the policy is less than three consecutive whole months. Premium adjustments for modifications involving both increased coverage and reduced coverage must not be computed by applying one percentage to the difference in the full term premiums required; additional premiums and return premiums must be computed separately.

For an endorsement requiring an additional premium

Note: The percentages shown below shall be used only for adding objects and shall be applied to Object Charges; for any other increase in coverage, the percentage shall be determined on a pro rata basis, using the ratio of the number of days in the unexpired term to the total number of days in the policy term.

*Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.8	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27				

For an endorsement allowing a return premium

†Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	7.0%	3.8%	2.6%	2.0%
2	14.1	7.6	5.2	4.0
3	21.3	11.4	7.9	6.0
4	28.4	15.3	10.5	8.0
5	35.4	19.1	13.1	10.0
6	42.4	22.9	15.7	11.9
7	49.7	26.7	18.3	14.0
8	56.8	30.7	21.0	16.0
9	63.8	34.5	23.6	17.9
10	70.8	38.2	26.2	20.0
11	78.1	42.2	28.8	22.0
12	85.1	46.0	31.5	24.0
13		49.8	34.1	25.9
14		53.6	36.7	27.9
15		57.5	39.3	30.0
16		61.3	42.0	31.9
17		65.1	44.6	33.9
18		68.9	47.2	35.9
19		72.8	49.8	37.9
20		76.6	52.5	39.9
21		80.4	55.1	41.9
22		84.2	57.7	43.9
23		88.2	60.4	45.9
24		92.0	63.0	47.9
25			65.6	49.9
26			68.2	51.9

ADJUSTMENT TABLE

To obtain the additional premium or return premium which may be required for an endorsement effecting a change in any provision or condition of this policy, determine from the Adjustment Table the percentage for the unexpired term of the policy and apply that percentage to the premium that would be required for such change for the full term of the policy; except that if an object previously covered by the policy is added to the policy the additional premium required shall be equal to the amount which was allowed as the return premium on said object if the period between the date of elimination and the date upon which it is added to the policy is less than three consecutive whole months. Premium adjustments for modifications involving both increased coverage and reduced coverage must not be computed by applying one percentage to the difference in the full term premiums required; additional premiums and return premiums must be computed separately.

For an endorsement requiring an additional premium

Note: The percentages shown below shall be used only for adding objects and shall be applied to Object Charges; for any other increase in coverage, the percentage shall be determined on a pro rata basis, using the ratio of the number of days in the unexpired term to the total number of days in the policy term.

*Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.6	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27			76.4	58.1
28			79.0	60.1
29			81.7	62.1
30			84.3	64.1
31			86.9	66.1
32			89.5	68.1
33			92.1	70.0
34			94.8	72.1
35			97.4	74.1
36			100.0	76.0
37				78.0
38				80.0
39				82.1
40				84.0
41				86.0
42				88.1
43				90.0
44				92.0
45				94.0
46				96.0
47				98.0
48				100.0

*For adding objects, the number of Months in the Unexpired Term shall be determined by counting from the effective date of the policy modification to the corresponding day of the month in succeeding months to the expiration of the policy, including as a full month any fractional part of a month remaining; except that when an added object is used to replace another object which is eliminated from the policy on the same date, the number of Months shall exclude as a full month any fractional part of a month remaining.

For an endorsement allowing a return premium

†Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	7.0%	3.8%	2.6%	2.0%
2	14.1	7.6	5.2	4.0
3	21.3	11.4	7.9	6.0
4	28.4	15.3	10.5	8.0
5	35.4	19.1	13.1	10.0
6	42.8	22.9	15.7	11.9
7	49.7	26.7	18.3	14.0
8	56.8	30.7	21.0	16.0
9	63.8	34.5	23.6	17.9
10	70.8	38.2	26.2	20.0
11	78.1	42.2	28.8	22.0
12	85.1	46.0	31.5	24.0
13		49.8	34.1	25.9
14		53.6	36.7	27.9
15		57.5	39.3	30.0
16		61.3	42.0	31.9
17		65.1	44.6	33.9
18		68.9	47.2	35.9
19		72.8	49.8	37.9
20		76.6	52.5	39.9
21		80.4	55.1	41.9
22		84.2	57.7	43.9
23		88.2	60.4	45.9
24		92.0	63.0	47.9
25			65.6	49.9
26			68.2	51.9
27			70.9	53.8
28			73.5	55.9
29			76.1	57.9
30			78.7	59.8
31			81.4	61.8
32			84.0	63.9
33			86.6	65.9
34			89.2	67.8
35			91.9	69.9
36			94.5	71.8
37				73.8
38				75.8
39				77.8
40				79.8
41				81.8
42				83.8
43				85.8
44				87.8
45				89.8
46				91.8
47				93.8
48				95.8

†The number of Months in the Unexpired Term shall be determined by counting from the effective date of the policy modification to the corresponding day of the month in succeeding months to the expiration of the policy, excluding any fractional part of a month remaining.

Short Rate Cancelation Table

Showing percentage of premium to be taken as earned premium

Months Policy in Force	One Year Policy	Two Year Policy	Three Year Policy	Four Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.8	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27			76.4	58.1
28			79.0	60.1
29			81.7	62.1
30			84.3	64.1
31			86.9	66.1
32			89.5	68.1
33			92.1	70.0
34			94.8	72.1
35			97.4	74.1
36			100.0	76.0
37				78.0
38				80.0
39				82.1
40				84.0
41				86.0
42				88.1
43				90.0
44				92.0
45				94.0
46				96.0
47				98.0
48				100.0

Less than one month shall count as a whole month and the percentage to be used shall be that specified for the next succeeding number of whole months.

The Travelers

The Travelers Indemnity Company

Hartford, Connecticut

Policy

Specimen Contract

No.

ISSUED TO

Expires 19

1-618 Ed. January 1940 PRINTED IN U.S.A.

The Travelers

Conference Form Policy for Boiler or Machinery Insurance
Copyright 1939 by J. P. H. deWindt

THE TRAVELERS INDEMNITY COMPANY hereby consents to the Assignment of Interest as made above.

Secretary

Recross-examination.

By Mr. Christian:

Q. Mr. Tabb, what work do these employees do?

A. These employees are all on salary and perform various duties, including inspection and rating of risks in claim adjustments, when necessary, and do all of the various things that come up in a general insurance business.

Q. How many bookkeepers are there among the nine?

A. We have very little bookkeeping because we operate our business on what is known as the card system.

Q. How many of them are male and how many of them are female?

A. Five men and five women. I made a mistake in the number.

[fol. 707] Q. Mr. Christian has frequently asked you about various customs among lawyers, comparing them with insurance agents. I will ask you if you ever heard of any practice among lawyers, if they happened to think some other lawyer had greater ability to handle a particular matter of business entrusted to them, to decline to take the case and recommend that the business be referred to another lawyer, supposed to be of greater ability, or that a lawyer who failed to do that would be guilty of any breach of ethics and duty to his client.

A. I have a high regard for the members of the legal profession and I think they would be as conscientious about a matter as anyone I know. In fact, I believe as a general practice when a criminal case is brought to a lawyer who is not well versed in that department he refers it to some more able criminal lawyer. I think the judgment of a lawyer as to who is most competent to handle a case is something that he could be readily excusable in not expressing an opinion on. That is up to his client.

[fol. 708] There are ten instead of nine.

Q. And the women are principally engaged, I suppose, in secretarial work and stenographic work?

A. And general office work.

Q. And the five men in the main are engaged in outside work?

A. Largely, with some inside duties, too.

Q. How many sub-agents does your agency have?

ASSIGNMENT OF INTEREST

The interest of the Assured in this policy is hereby assigned to.....

.....

whose address is.....

with respect to unearned premium and losses from accidents occurring after noon of.....*19*.....,

subject to the consent of THE TRAVELERS INDEMNITY COMPANY.

.....

(*Signature of Assured*)

THE TRAVELERS INDEMNITY COMPANY hereby consents to the Assignment of Interest as made above.

.....

Secretary

706b-3

A. Four all-time solicitors in my office. The outside business is handled with agents who do not give me all of their business and place it with me from time to time and are not licensed by my office for our company but are allowed to place business with my office.

Q. Those outside people are allowed to place the business with the branch office here instead of with you as general agent?

A. No, because the branch office takes no business over the counter. They only take business from their own agents.

Q. Are they outside agents, agents who have contracts with Travelers Insurance Company?

A. No.

Q. They are really, in their relationship with you, brokers?

A. Correct.

Q. And they are not sub-agents of your concern at all in the sense in which that term is ordinarily used?

A. Correct.

Q. And the only sub-agents, if it would be proper to use the term at all with reference to these people that you have, are these four whole-time solicitors that work for your firm?

A. Correct.

[fol. 709] Q. And they are licensed as solicitors under the Virginia law?

A. Of the Travelers and other companies, too.

Q. They are licensed as solicitors for Tabb, Brockenbrough & Ragland and not of any company under the new law.

A. No, I think they are all licensed specifically, according to my recollection. One of the four, I think, has a contract with the Travelers Insurance Company as an agent and is licensed as a Travelers' agent. The other three, I believe, are not licensed as Travelers' agents, nor do they have contracts, I believe, with Travelers but they are simply authorized as solicitors for my office and licensed as such.

Q. Do all have authority to solicit casualty and surety business?

A. The solicitors, yes—all forms of insurance written by my office.

Q. Ordinarily in this business about which we are speaking would you service your assureds and the other partners

and the solicitors service theirs or would you at times be servicing theirs for them?

A. Usually, in the absence of any complications, each partner services the business he is directly in touch with but very frequently all of us perform service regardless of who writes the business.

Q. You mean you might be out of town when occasion for service would arise and, in that case, one of your partners would service it but if you were in town they would ordinarily ask you, wouldn't they?

[fol. 710] A. Yes, of course we do it under those conditions, but also we confer frequently as to the best methods of handling cases of all kinds arising under any policy issued in our office.

Q. Did you mean to leave the impression on the court that in talking about this tobacco risk we spoke about the other day or this risk with the 800 coverages that the court ought not to consider your testimony as completely presenting the service that was rendered on those contracts because somebody else down at your office might have rendered some without your knowing about it?

A. No, I think my testimony is complete regarding those cases because I produced them myself and usually looked after the entire details.

Q. And that is so of these workmen's compensation risks you have got covering away from Virginia and outside of Virginia, isn't it?

A. Yes, though my partners have produced similar business.

Q. I mean you know about your business and they know about theirs; isn't that right?

A. Yes, sir, and I usually know about all of them because I more or less come in contact, as head of the firm, with all the business produced.

Q. Friday when we were speaking about the Travelers engineering and claims services and their various characteristics, I understood you to say that you did not feel sufficiently acquainted with the engineering and claim services of the Fidelity and Casualty Company of New York, Maryland Casualty Company, United States Fidelity & Guaranty [fol. 711] Company, Aetna Casualty & Surety Company and such other leading companies as the Globe, Employers Liability, New Amsterdam, Ocean and similar companies, to compare the characteristics of their claims and engineering

services with the characteristics of the Travelers' engineering and claim services? Is that understanding on my part correct?

A. Yes, I made the statement and reiterate that I have had no absolute experience with them except from a general competitive knowledge gained from common hearsay which may or may not be an accurate gauge.

Q. You think, without going into the details of why the Travelers is better, that the Travelers is the best, don't you?

A. Yes, sir, because I have had 45 years' experience with them and get the reactions from policyholders.

Q. And you are loyal to that company and believe in the Travelers?

A. I do, sir, 100%.

Q. Give a specification of things which the Travelers claim department, under the jurisdiction of Mr. Davison, attempts to do which the claim departments of those other companies do not attempt to do. I will say if you do not know anything specific you may answer by saying so.

A. I would say that the claim department of the Travelers is headed by a man of 25 or 30 years' continuous connection with the company and his service and ability, in my judgment, are very superior and cause prompt settlement of claims and very valuable accident prevention service which [fol. 712] I don't think could possibly be furnished by part-time claim departments of other companies.

Q. These companies other than the Travelers, about which I have been speaking, are selling their contracts at substantially the same rates as the Travelers and sell in a substantial way the same identical contracts, don't they, having in mind, of course, that the Travelers Insurance Company and the Travelers Indemnity Company do not sell fidelity, surety, or forgery contracts and that the Travelers Indemnity Company alone, of the two, writes the boiler insurance and perhaps other lines. With those exceptions is not what I say correct, that the forms of contracts among the various competitors are substantially the same?

A. Yes, I judge they are practically the same and many times identical on account of standard forms being used, but the administration of the policy may be as wide as the poles.

Q. And these other companies, to the extent that they have volumes of business as shown by the record, have gotten and retained their business up to this time while selling

substantially the same contracts as the Travelers companies and at substantially the same premium charges, have they not?

A. Yes, I presume the rates are more or less uniform.

Q. That is not what I asked you. You had already said that was so. What I am asking you now is—isn't it a fact that what business these other companies have they have been able to secure and retain and keep from going to the Travelers in open, fair and honest competition with the Travelers?

A. I would say so. I have no evidence to the contrary.

[fol. 713] Q. And a part of that competition is their claims and engineering services, is it not? In other words, are not these services factors which enter into the successful or unsuccessful competition?

A. Yes, but I think I would conclude that their small business shows rather conclusively that their service is not up to the Travelers and other companies.

Q. What other companies?

A. Other companies who maintain varying degrees of service.

Q. What other companies have a larger business in Virginia than those we have been talking about except the Travelers?

A. Well, the difference in premium volume is quite pronounced in those companies so it might be concluded that service had a great deal to do with the comparative premium volume of those companies in Virginia.

Q. In forming an accurate opinion as to whether that is a just conclusion wouldn't you have to know about a good many more factors involved in their competition, such as the period of time the two companies have been in business?

A. That, of course, and many other factors, have to enter into it, but I think in this day of competition the company that keeps its prominence in the casualty business has got to render service and stand being shot at from all the other competitors.

Q. Don't you think that the fact that the Travelers is a multiple line company with a huge volume of life insurance business and a considerable line of fire insurance business [fol. 714] and a splendid good will in connection with those two businesses, existing before it went into the casualty insurance business, had a benefit in its vast pool of assets

and its vast good will from those other two lines of business and its vast agency organization already created and available to write casualty business, constituting competitive assets not available to the newer companies, not multiple line companies or members of groups furnishing the multiple lines?

A. Of course, these factors enter into it but the Travelers Fire Insurance Company was formed long after the Travelers Indemnity or the Travelers Casualty Departments. Of course, the matter of assets and other predominant factors of the Travelers must help, of course, in its general development of business but I insist that its service in connection with local business, both in claims and in engineering service, is acknowledged to be superior by most buyers of insurance with whom I come in contact and I feel that it is superior.

Q. And the method of their acknowledgment of this superiority is that you are successful in selling them and getting them to hold Travelers contracts instead of some others, isn't it?

A. Largely, yes, sir.

Q. And if you left the Travelers tomorrow, as you rather boldly proclaimed when I was trying to compare you with a clerk in Greentree's store, and you got all of these assureds to go with you to the Aetna or the F. & C., or wherever you went, then by the same token you could come on the witness [fol. 715] stand the next day and claim that most of the people you came in contact with thought that your new company had a superior claim service and engineering service, couldn't you?

A. I would certainly hope that it was possible to develop that thought and that result.

Q. But you still say you control your casualty and surety business, don't you?

A. Yes, I do.

Q. You said a small percentage of these 80 maintain a local establishment in Virginia for engineering and claim service. I ask you to designate which of these 80 companies —and I hand you the Virginia Insurance Report containing, at pages 268 to 271, their names, in order that you may elucidate to the court the ground on which you said only a small percentage of them maintained these establishments. I ask you in phrasing your answer to state which ones do not

maintain those local establishments, though I have no objection, if it will assist in making your answer brief, to your affirming that none do except those which you designate.

A. 11 are all I can find in there that I think maintain them.

Q. They are the Aetna Casualty & Surety Company, Continental Casualty Company, Fidelity & Casualty Company of New York, Fidelity & Deposit Company of Maryland, Globe Indemnity Company, Hartford Accident & Indemnity Company, Maryland Casualty Company, National Surety Corporation, Travelers Indemnity Company, Travelers Insurance Company and the Ocean Accident & Guarantee Corporation, Ltd.?

A. Yes.

[fol. 716] Q. What about the American Surety Company?

A. I don't think they maintain a claim department and an engineering department as contemplated by the question I understood Mr. Christian to ask.

Q. I used the expression which you used in your testimony on redirect examination in referring to a local establishment. Does that change your understanding of my question when you know I am talking about a local establishment as you used the expression?

A. No, I understood you to refer to all-time claim departments located in Richmond for the exclusive handling of Virginia claims and engineering service and accident prevention.

Q. So these are the people that, according to your impression, have the whole-time employees?

A. Yes, sir, giving this service.

Q. Do all of the others have, according to your understanding, the part-time services of claims and engineering people in Virginia.

A. No, I think most of them have offices outside of Virginia, such as Washington or Baltimore, and send these men in when occasion demands.

Q. Provided they come often enough from Washington or Baltimore and come rapidly enough when occasion arises, would there be any difference between their having an office in Washington and having it across the river in Alexandria?

A. No difference from a physical standpoint but I doubt if they would come often enough and would keep in as close touch with their risks as men who are on the ground and have only that duty.

MICRO CARD
TRADE MARK ®
22
39
14900
MATTHEW BENDER & COMPANY
MB
65
microcard

[fol. 717] Q. You can get to Alexandria just as readily from Washington or Baltimore as you could get to Alexandria from Richmond, couldn't you?

A. Yes, but the bulk of the business is in Richmond and vicinity and, therefore, local people can give the better service.

Q. Don't these large assureds usually contract for workmen's compensation and liability insurance with one of the leading companies or do they frequently contract for it with one of the companies which is not among the leading companies?

A. Well, of course, it must be usual on account of the volume of premiums which would indicate this fact.

Q. And that is more particularly true in the case of a large assured placing risks which cover in a large number of states than it would be true where the coverage was only in one state and where it might in influenced by some local condition.

A. I should say so, yes.

Q. Do I understand that you still stick to it that Mr. T. Garnett Tabb, with his residence and place of business in Richmond, Virginia, with the help of this particularly efficient claim department and particularly efficient engineering and safety department of the Travelers, can render adequate service to his assureds on workmen's compensation and other risks, even though the localities of the coverage are at distant points in the State of Virginia and in other states than Virginia?

A. Yes, sir, I think I can give efficient service.

Q. And you don't need the help of any local agent for your assureds to get adequate service in those cases?

[fol. 718] A. I have not felt the necessity in many cases up to this speaking and I, (of course, would not require it if I didn't need it.

Q. You said the other day that you hadn't required it in the case of any of these workmen's compensation risks covering in points distant from Richmond, either in Virginia or other states where you had produced as an agent; is that correct?

A. Yes.

Q. And your point, as I understand, is that whereas that condition exists as to Mr. Tabb, due to his connection with the Travelers, in the case of the average Virginia agent

with the average company admitted to Virginia that would not be true, in your opinion, because the engineering and claim service of the average company isn't as efficient as the engineering and claim service of the Travelers; is that correct?

A. That is largely the reason for my feeling.

Q. And dealing now neither with the Travelers nor with average companies, but dealing with the other leading companies, your answer is that you are not sufficiently acquainted with the claim and engineering departments of any particular one of them to pass on the matter from the standpoint of that one particular company's agent; is that correct?

A. I can only judge by general information that is not such as I could testify to any particular case and so, of course, my opinion is just based on the results of competitive conditions with these companies.

[fol. 719] Q. But you don't make any statement of that sort as to Davenport Insurance Corporation and F. & C., or as to Gibson, Moore & Sutton and the Maryland? You are just making it as to the average company and the average agent and not a leading company and a leading agent such as Davenport and F. & C., or Gibson, Moore & Sutton and Maryland; is that correct?

A. Well, I still feel that the Travelers put me in a better position than any of the companies mentioned.

Q. It even puts you in a better position than the F. & C. does Davenport or Maryland does Gibson, Moore & Sutton?

A. Yes, I think so.

Q. But you admit you can't point to anything that the Travelers' claim department or the Travelers' engineering department furnishes that the F. & C. and Maryland departments don't furnish? Is that correct?

A. I think their basic thought in handling those department is largely the same but I think the results are different.

Q. But you admit you don't know anything about their results?

A. Well, I know, yes, in competitive conditions but it is an intangible thing that I couldn't exactly put on paper in testimony.

Q. At least there are some mighty big local assureds that you haven't been able to convince that your views are correct and get the business away from those people, aren't there?

A. Yes, but I don't know on what basis it is that I haven't been successful, whether it is service or personality or other [fol. 720] things that enter largely into insurance placing.

Q. Won't you concede that your personality and your personal relationships with a good many mutual friends of yours and mine have been heavy factors in getting you the business of their corporations?

A. Yes, it always enters into it.

Q. It might have been that your personality and that personal relationship was a controlling factor rather than this purported superiority of Travelers' claim and engineering services over the claims and engineering services of other companies? Isn't that correct?

A. Certainly.

Re-redirect examination.

By Mr. Staples:

Q. I ask you whether or not you know or have heard of any contracts made outside of the state by Lloyd's covering in Virginia, relating to workmen's compensation insurance or fleet liability insurance?

A. No, I have never come in personal contact with any of these two lines written by Lloyd's, but I have come in contact with various other lines written by Lloyd's.

Q. What other lines have you come in contact with?

A. Banker's blanket forms principally, jewelry insurance and excess cover under public liability.

Q. Is the excess cover contract made with another insurance company in the nature of reinsurance or what is excess coverage?

[fol. 721] A. It is made with the assured to cover him for any amount in excess of a stipulated amount in his contract.

Q. In a case of that kind does another insurance carrier have a similar risk?

A. They have primary coverage. In other words, the stock company has the loss up to a certain extent or the insured may carry it himself and then Lloyd's simply pays any loss in excess of that stipulated amount.

Q. Is it customary for most of these contracts to be carried by the carrier and not by the insured in the nature of reinsurance?

A. I did not refer to reinsurance. I referred to excess or additional coverage which is not reinsurance.

Q. Does Lloyd's render any service in Virginia on these excess insurance contracts that you know of or have ever heard of?

A. I never heard of their rendering any. It is usually done by correspondence through Canada or direct to the company in London or, in cases, through a Chicago connection.

By Mr. Christian:

Q. Mr. Tabb, in the case of both the small volume casualty and surety companies as well as non-admitted casualty and surety companies, there are available to their employment, in connection with claim and safety and engineering matters, independent attorneys and independent adjustors like the Nichols Company and independent engineers who attempt to furnish, as independent contractors, these various services to people not providing them by their own salaried employees, are they not?

[fol. 722] A. Yes, there are both independent attorneys and independent adjustors, but just how far their services would go in such connection, I don't know.

Q. And there are independent safety engineers, are there not?

A. Yes.

Q. And the Nichols Company, for instance, to your knowledge, represents numerous casualty and surety companies not maintaining salaried claim departments in Virginia, does it not?

A. I so understand they do.

Q. And that is so of certain engineers in Richmond, is it not, who purport to furnish inspections and so on?

A. I don't know about the engineering and inspection service but I presume some such service is procurable in a city like Richmond.

Q. The independent adjustors advertising in the classified section of the Richmond telephone directory, in addition to Nichols, Inc., include Coastal Insurance Adjustors, W. H. Davidson, Henry B. Frazier, Jr., Old Dominion Adjustment Bureau, Inc., Robert R. Reed, John A. Ryan, Jr., Seibert Company, Inc., and Frank D. Young, do they not?

A. Yes, I see that advertisement.

Q. And you are well acquainted with the firm of Froehling & Robertson, Inc., as people of long standing and high stand-

ing in the City of Richmond whose name you see there as advertising that they are in the business of inspection engineers, do you?

[fol. 723] A. Yes, but my knowledge of that firm would not justify me thinking that they catered to the class of inspection included under an insurance policy.

Q. You don't know any engineers that make a specialty in Richmond of doing independent inspecting under insurance policies?

A. I do not.

By Mr. Staples:

Q. Do you know of any independent organizations that render service to insurance companies or purport to do so with reference to safety meetings?

A. I do not.

Q. Did you ever hear of a non-admitted company employing any of this type of service referred to in Mr. Christian's last question?

A. I did not.

By Mr. Christian:

Q. As a matter of fact, you don't come in contact with what the non-admitted companies do but, instead, come in contact substantially with only what the companies which you represent do; isn't that correct?

A. That is correct.

T. T. Moore, a witness called on behalf of the defendants, and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Moore, I wish you would state your name, age, residence and occupation, please.

A. T. T. Moore; Chief Examiner, Bureau of Insurance: [fol. 724] residence, Richmond, Virginia.

Q. Mr. Moore, do your duties with the Bureau of Insurance, a division of the State Corporation Commission of Virginia, place upon you the obligation and discretion generally in enforcing the statutes relating to insurance insofar as they apply to the insurance agents and relations of these agents with the insurance companies?

A. My duties in the Bureau of Insurance place the active work of handling agents and agency matters and licensing of agents in my charge, subject, of course, to the supervision of The Commissioner Bowles and the Corporation Commission.

By Mr. Staples:

Q. There has been incorporated in the stipulation of facts in this case a letter which was written on September 9, 1938, on the stationery of the Bureau of Insurance and which is signed by George A. Bowles, Commissioner of Insurance. Under the signature "George A. Bowles" is the letter M. This letter relates to the construction which the Bureau of Insurance was then placing or had placed upon certain statutes which are involved in this suit and with which you are familiar. The letter was written in reply to a letter from Mr. Christian, bearing date September 6, 1938, addressed to Mr. Bowles in which he inquired as to the construction placed by the Bureau of Insurance upon these statutes. I will ask you whether or not this letter in question, a copy of which I will now show you, was actually written by you or whether same was really written by Mr. Bowles.

A. I actually wrote the letter.

[fol. 725] Q. The fifth paragraph in that letter is as follows: "In our opinion Section 4226a requires a non-resident producer of a contract covering in Virginia to have a Virginia broker's license, even though none of his solicitation or other activity takes place within this State." Will you please state what you intended to mean by that language when you incorporated it in that letter?

A. I intended it to mean that, that would be true where the non-resident broker received or was to participate in the commission.

Q. Was that intended to have any application to a case in which the non-resident broker did not participate in the commissions but received such compensation as he may have received or might receive directly from the insurance company?

A. No, sir.

Q. Will you please state the two general classes under which agents' licenses issued by your department, are divided by the 1938 statute?

A. What are termed resident agents and what are termed, generally speaking, company representatives.

Q. Within those two general divisions of agents what licenses are issued within each?

A. As far as company representatives are concerned, there is only one class of company representative license which is issued to state agents, so-called special agents and branch managers. In addition to the resident agents' licenses issued to individuals, there is also an agency license [fol. 726] and also sub-agents, known as solicitors.

Q. Mr. Moore, your answer may not be entirely clear to the court as to which of these two divisions the resident agent's license falls and I wish you would please draw the line a little more clearly in your answer. State it all over again, if you wish, and take division No. 1 and then division No. 2.

A. I have divided the licenses issued by the Bureau of Insurance into two general classes, the first being the license issued to the so-called company representative.

By Mr. Staples:

Q. Stop there and I will bring it out.

Q. I will ask you to state the types of licenses issued in that class as I believe the court can more readily understand the matters if the two classes are kept separately.

A. There is only one form of license issued to this class of company representatives, the same license being issued to State agents, special agents, branch managers, etc.

Q. What do you call that license when you issue it?

A. We call it a special agent's license.

Q. Isn't there any other license which you issue to salaried employees of an insurance company in Virginia?

A. No, sir.

Q. Coming to the second division, what licenses do you issue to persons working on a commission basis for the securing of insurance policies?

A. A resident agent's license is issued to individuals pro- [fol. 727] curing business, etc., on a commission basis.

Q. What licenses do you issue to sub-agents, if any?

A. Sub-agents of resident agents of agencies may be licensed as solicitors.

Q. What is a resident agency license?

A. A resident agency license is a license issued to a firm or corporation engaged in soliciting business, etc., which is operated by a resident agent or agents.

Q. Where there is more than one resident agent it is termed a resident agency license; is that correct?

A. No, sir, the resident agency license is issued to a firm or corporation, as the case might be, when the business is conducted as a firm rather than as an individual, regardless of whether there is one or more than one resident agent connected with it.

Q. Since the 1938 Act became effective has the department issued any resident broker licenses?

A. Not since the 1938 Act became effective.

Q. To what type of person is a non-resident broker's license issued?

A. A non-resident broker's license is issued to a person or firm located in another state who is duly licensed as an agent or broker in that state.

Q. Are there any other types of licenses issued to persons working in the insurance business on a commission basis?

A. Excluding life insurance, there are none.

Q. I believe the testimony you have given above applies only to fire insurance, casualty insurance and surety busi-
[fol. 728] ness; is that correct?

A. It applies to all forms with the exception of life, title and ocean marine. That is the way the Act reads.

Q. I will ask you if you can state the number of resident brokers' licenses issued in Virginia for the year ending April 30, 1935.

A. There were three resident brokers' licenses issued for the license year ending April 30, 1935.

Q. Have you computed the information up to a recent date, within the last month or two, which would show the total fees paid into the State for licenses for non-resident brokers, the total number of licenses issued and the average fee paid by each?

A. I have computed the total of fees for broker's licenses, both resident and non-resident, for the year beginning April 30, 1938, to sometime in November, 1938, and the average fee paid for such license was $19.54.

Q. Give the total number of licensees and the total receipts.

A. 328 licensees and total receipts $6,410.33.

Q. I wish you would state, if you have the information, what were the total net premiums of stock fire insurance companies which were reported as a basis of taxation by the various companies for the calendar year 1937.

A. Total net stock fire insurance premiums for the year 1937, covering in Virginia, including tornado, inland marine, automobile fire and theft, and other lines done by fire companies, amounted to $10,568,780.

[fol. 729] Q. This amount represents, as I understand it, all amounts reported for taxation, regardless of whether the business was actually negotiated in Virginia or negotiated and written outside of Virginia?

A. That is correct.

Q. Will you please give the same information with reference to all other stock insurance companies except life, title and ocean marine insurance companies?

A. The total premiums reported for all other forms of stock insurance, excluding that written by life, title and ocean marine and fire insurance for the year 1937, is $9,830,634.

Q. I wish you would state, if you can, the total number of agents in Virginia who had been licensed during the current year up to November 28, 1938, as resident agents in Virginia for fire, casualty and all other forms of insurance except life, title and ocean marine insurance companies.

A. The total number of individuals who are so licensed as resident agents is 2,959 persons.

Q. Are these all agents for stock companies?

A. These are all representatives of stock companies.

Q. Is that the total number of individual resident agents of stock companies who had been licensed from April 30, 1938, to November 28, 1938?

A. No, sir, it is the total number issued since July 15, 1938, to November 28, 1938.

Q. That is the number of individuals and does not take into account any duplicate licenses which may have been issued to one agent for representing more than one company, does it?

[fol. 730] A. That is correct. It is the number of individuals.

Q. Do you know whether there have been licenses continually issued since that time?

A. There have been licenses issued continually since that time but I am unable to say just how many have been issued.

Q. Have you included in any of the figures you have given as to the number of licenses issued to resident agents any licenses which have been issued to company representatives

under the first division of licenses to which you referred in your testimony a few minutes ago?

A. No, sir, I have not.

Q. The answer in this case alleges that "the Virginia statutes here challenged have divided and classified into two separate classes or groups the persons engaged in Virginia in the business of procuring or of assisting or supervising others in procuring the making of certain insurance casualty and surety contracts." Are the two divisions which you have testified about today the ones referred to in that answer?

A. They are.

Q. Under the construction which your Department has placed upon the statute with reference to granting licenses to company representatives and resident agents, is it permissible for one person to have both classes of licenses as a representative of the same company?

A. No, sir.

Q. Does your Department construe the Virginia statute as prohibiting non-resident persons, who are not licensed as non-resident brokers in Virginia to negotiate contracts [fol. 731] outside of Virginia covering risks in this state?

A. No, sir.

Q. Has your Department construed it as a violation of law for an insurance company to pay a non-resident, who is not a licensed non-resident broker in Virginia, for his services in negotiating such a contract outside of Virginia?

A. No, sir.

Q. What is the extent to which your Department is enforcing and intends to enforce the law so far as the status of non-resident persons who may negotiate Virginia coverage contracts out of this state is concerned?

A. The Department intends to require every non-resident broker to secure a license in order to participate in the commissions on business which he might write covering in Virginia, and, by participating in the commissions, I mean participation or sharing in the resident agent's commission.

Q. If an insurance company which itself is licensed in Virginia should employ a non-resident person, not licensed as a non-resident broker or otherwise, in Virginia, to negotiate for such company a contract of casualty, surety or fire insurance, and pay such person a commission therefor, would your Department institute any proceedings for

the revocation of the license or consider that such company had in any way violated the Virginia Statute?

A. Not as long as the resident countersigning agent in Virginia received his full commission.

Q. What does your department construe the words "usual and customary commissions" as used in Section 4226a of [fol. 732] the Code to mean?

A. The Department construes that to mean the usual and customary producer's commissions.

Q. Would that include any over-riding commissions usually paid to general agents?

A. It would not.

Q. Is the Department construing the statutory provisions in such manner as to make it unlawful for a branch manager, or any other officer or employee of an insurance company to countersign a policy or contract, provided same is also countersigned by a resident agent?

A. No, sir, not as long as it is countersigned by a resident agent.

Q. What does your department construe the words, as used in Section 4222 of the Code, requiring all such policies and contracts "made through regularly constituted and registered resident agents" to mean?

A. We construe that to mean countersigned by a resident agent.

Q. Then any such contract, even though entirely negotiated outside of the state, if it is sent to a registered resident agent of Virginia and countersigned by him, is deemed to be made through such agent as your Department construes this requirement in Section 4222 of the Code?

A. That is correct.

Q. If a fire insurance, casualty or surety company sends to a registered resident agent of Virginia a policy or contract of insurance, is there any reason, so far as you know, under the statutes as construed by the Bureau of Insurance, [fol. 733] to prohibit or prevent such resident agent from countersigning same and returning the policy to the company which sent it to him for countersignature?

A. No, sir.

Q. Your department then does not construe it as a requirement of the statute that a non-resident licensed broker shall send the policy to a resident Virginia agent?

A. No, sir, we do not.

Q. I wish you would read paragraph 16 of Defendants' answer in this case and state whether or not the statement therein contained as to the interpretation placed by the defendants upon the 1938 statutes is in accordance with the interpretations and enforcement thereof which your Department is now, and intends in the future, to apply to the transactions referred to in that paragraph of the answer, and, if not, please point out in what respect same is not in accordance therewith.

Mr. Christian: I object to this question. It seems to me obvious that when this gentleman has testified that he is a subordinate of the defendants in this case and he is brought here as a witness to swear to facts which they consider advisable to prove in this case, and counsel asked him to read a part of the answer drawn by counsel and say whether or not it is correct or is not correct, it would be a remarkable misunderstanding between counsel and the witness in the drafting of the answer for it to prove to be incorrect, as counsel has presumably drawn the answer in accordance with his understanding of his client's desires.
[fol. 734] I further object to the question in that it calls for testimony by the witness as to certain matters not material at all to this litigation and not material at all to the law which is in dispute here.

A. Paragraph 16 of the answer reads:

"The defendants deny that they have construed, are construing, or will construe or enforce the provisions of the statutes contained in the 1938 Act, referred to in the complaint, in the manner alleged in the complaint, but aver that they will enforce same in accordance with the following interpretations, which are the defendants' interpretations of said statute:

"(a) Contracts are made 'through regularly constituted and registered agents or agencies of such companies' as required in Code section 4222 when such contracts are countersigned by a 'Resident Agent' as required by said section, even though he does not negotiate the contracts or deliver same, or collect the premiums."

I have already testified that this is the construction placed on the expression used in section 4222 "through

regularly constituted and registered resident agents or agencies of such company."

A. (Continuing) Paragraph (b) reads as follows:

"The making of the contract in this manner 'through' such a 'Resident Agent or Agency' imposes on such agent or agency the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff, in [fol. 735] connection therewith, as customarily apply in cases where the 'Resident Agent' himself negotiates a similar contract."

It is certainly the construction of the Bureau of Insurance that the resident agent or agency, through whom the policy or contract of insurance is placed, has the duty of reviewing the policy forms, the conditions of the contract, its applicability and, in general, the servicing of the contract in the same way as if the policy had originated in his own office. This is certainly the custom of the business.

Mr. Christian: I object to that answer on the ground that it is as to a matter which is immaterial to this case, inasmuch as there is no requirement of law to support the claimed view of the defendants as to what is the duty of an agent, whether he was the originator of the contract or not, in respect of servicing and altogether what he says is merely undertaking to add something to the law to support the outrageously unreasonable requirement of the law for the receipt by the Virginia countersigner of 50% of the commission, regardless of its size and regardless of the disproportion in the value of the services of the producer and the countersigner.

Q. You have reference, I believe, to contracts negotiated entirely outside of the state but which cover risks in Virginia, as well as contracts negotiated inside of the state where one agent associates another with him?

A. That is correct.

Q. Now, you can go ahead.

A. Paragraph (c) reads as follows:

"A 'Resident agent' may lawfully countersign a contract [fol. 736] at the request of his company or its 'Branch Manager', or any other 'Company Representative' or non-

resident office-, though the officer be not licensed as a representative. In such case the contract is made 'through' such 'Resident Agent.' "

In our opinion a resident agent may lawfully countersign the contract at the request of a branch manager or other person outside of Virginia as long as he receives the full commission on such business. Of course, if he divides his commission with a non-resident broker, the non-resident broker in that case must be licensed.

Paragraph (d) reads as follows:

"A 'Resident Agent' may lawfully countersign a contract at the request of any licensed, registered 'Resident Agent' or licensed 'Non-Resident Broker', and may pay to any such broker as much as one-half of his commissions on said contract."

This paragraph is simply a restatement of what I have already said to the effect that business may be written at the request of a licensed non-resident broker and that a resident agent may pay to such licensed non-resident broker not more than half of the usual commission.

Paragraph (e) reads as follows:

"A 'Resident Agent' through whom a contract is made, (as in (a) supra), must receive the full amount of the commission which he customarily receives on similar contracts, whether the contract is negotiated by the 'Resident Agent' through whom made, or negotiated by a company plaintiff, or outside of Virginia by a non-resident agent or broker for a company plaintiff."

[fol. 737] This is also our interpretation of the Act.

Paragraph (f) reads as follows:

"A 'Resident Agent' through whom a contract is made, as above set out, may not lawfully rebate to the insured any part of his commission, or pay any part thereof to any person, whether a resident of Virginia or not, unless such person is licensed and registered in Virginia either as (1) a 'Resident Agent' or (2) a 'Non-Resident Broker-.' "

This paragraph discusses the prohibition of rebating and this, in the opinion of the Department is prohibited by law.

Q. What about paying a part of his commission to a person not licensed as a resident agent or non-resident broker?

A. It would be construed as rebating.

Paragraph (g) reads:

"A company plaintiff is not prohibited by Virginia law from making in other states Virginia coverage contracts, or from availing itself of the service of unlicensed non-resident agents or brokers in negotiating same through such agents or brokers, or from paying commissions for such services, provided the contract is made 'through' a Virginia 'Resident Agent', as in (a) supra, and provided the said Virginia 'Resident Agent' receives his customary commissions as in (c) supra."

This paragraph is largely a restatement of what has already been said, that the law does not prohibit the resident agent from handling business received from his company or others, as long as he receives the full commission.

Paragraph (h) reads as follows:

"A Virginia non-resident broker's license confers on the [fol. 738] licensee the privilege of soliciting in Virginia either companies, or prospective assureds, or both, to make contracts; and also the privilege of making contracts so secured, or secured through negotiations outside of Virginia, through Virginia 'Resident Agents' as set out in (a) supra, and renders such licensee eligible to receive from such 'Resident Agents' as much as one-half of the commissions received by such 'Resident Agents', on any contract made through such 'Resident Agents' as in (a) supra."

This paragraph states that a non-resident broker's license confers upon the non-resident broker the privilege of soliciting in Virginia and receiving a portion of the commission paid to the resident agent in Virginia who countersigns the policy. This is certainly our construction of what a broker may do.

Q. What is the function of a solicitor under a Virginia license and what does he do?

A. A solicitor is a person who solicits business to be placed through a resident agent. He is responsible to the resident agent as opposed to an agent who is responsible to the company.

Q. State whether or not you have conferred with the members of the State Corporation Commission and the Commissioner of Insurance and discussed with them generally and reached an understanding as to the interpreta-

tion of these statutes in accordance with the opinions and statements you have hereinabove made.

A. I have discussed the interpretation and statements I have made with the Commission and with the Commissioner of Insurance and they concurred in these views.

[fol. 739] Cross examination.

By Mr. Christian:

Q. Early in your testimony you said that the matter of handling agents is in your charge. Please say what you mean by this.

A. By that I mean the handling of licensing of agents, and, to a large extent, the controversies that come up in connection with the administration of agents' laws and laws relating to agents.

Q. Do those controversies of which you speak include, in the main, allegations of illegal conduct by agents and investigation and findings and the taking of disciplinary measures where proper?

A. I wouldn't say they were mainly that. That is partly.

Q. What other subject-matters are there in controversy?

A. Questions arising as to the construction of the agents' laws, questions in regard to the impropriety of issuing licenses, etc.

Q. Construction of the law becomes important in connection with what sort of controversies, other than those I have mentioned?

A. Well, it simply means construction of laws in the way in which agents conduct themselves.

Q. You don't have anything to do with how they conduct themselves except in respect of the class of controversies I mentioned, to-wit; whether they are conducting themselves [fol. 740] lawfully or unlawfully, do you?

A. That may be correct, sir, but questions do arise regarding the conduct of the insurance business which the Insurance Department is called upon to express an opinion on.

Q. The point I am making, however, is that you don't have anything to do with handling agents except insofar as the administration of the insurance laws require the Insurance Department to have dealings with agents, do you?

A. That is correct.

Q. And you don't handle agency matters except to the extent that the insurance laws of Virginia relate to agency matters?

A. That is correct.

Q. And, therefore, your experience in the insurance business is limited to the administration of the insurance laws, is it not?

A. That is correct.

Q. Referring to the letter which you wrote me in answer to my letter to Mr. Bowles, and to paragraph 5 of that letter, what commissions do you mean to refer to when you say that paragraph 5 only applies where the broker is to receive a part of the commissions?

A. I assume by this you refer to the division of commissions between the licensed non-resident broker and the resident agent which I have already testified we interpret to mean producer's commission.

[fol. 741] Q. Is my understanding correct that so long as some Virginia countersigner receives and retains to his own exclusive benefit the full amount of the usual and customary commission paid for producing an insurance contract, you consider that Section 4226a does not make it unlawful for the non-resident producer, truly producing outside of the state the contract covering in Virginia, and licensed in his own state as an agent or broker, to receive additional compensation out of the premium?

A. In our opinion 4226a does not prohibit additional compensation being paid the non-resident broker as long as the resident agent in Virginia receives the usual and customary commissions.

Q. Is it a fair inference then that under this law, as you construe it, the State of Virginia has set up a situation whereby, if these non-resident producers of contracts covering in Virginia pay it for a license, then the company can get the Virginia countersignature for half of what it would otherwise cost the company to get the Virginia countersignature?

A. It is perfectly true that if the non-resident broker is not licensed, the resident agent in Virginia would be required to retain the full commission but that if the non-resident broker was licensed, the resident agent would only be required to retain not less than half of the commission.

Q. Is not that in effect an attempt by the State of Virginia to bring leverage and duress to bear on these foreign

companies admitted to Virginia and upon the transaction of the non-Virginia production of their business covering in [fol. 742] Virginia so as to compel the taking out of these Virginia licenses by these non-resident people who are not going to do any acts in the state of Virginia?

A. I do not feel that it is a matter of duress but simply a method of regulating the handling of the business.

Q. Isn't it a method of attempting indirectly to compel these non-resident members to pay Virginia for a privilege that they exercise outside of Virginia?

A. Of course, it does require the payment of a license fee by a person who may not actually come into Virginia but he still has the privilege of coming into Virginia.

Q. Isn't it a fact also that in order for the companies to get these Virginia countersignatures at one-half of what they would otherwise have to pay, they not only have to deal in those transactions through non-resident producers of the business, licensed in Virginia, but that those non-resident producers licensed in Virginia, must be willing to make an affidavit that they will not do any production activity in their own states covering in Virginia without getting the contracts countersigned by a Virginia resident agent?

A. It is a fact that each company licensed in Virginia is required to file an affidavit each year.

Q. Doesn't each broker who is licensed in Virginia have to file the same affidavit?

A. No, sir, this is the only affidavit he files (handing counsel a paper).

Q. I read you section 4226a of the 1938 Act in part as follows: "Before the Commission shall issue a license to any [fol. 743] such non-resident insurance broker, the applicant shall make affidavit that he will not, during the fiscal year, place directly or indirectly any contracts of insurance or surety upon persons or property located in this state except through duly licensed resident agents or agencies." That is in Section 4226a, isn't it?

A. That is correct, and the application for a broker, which is in affidavit form, further certifies that the broker agrees to comply with all provisions of the law which would take that in, I assume.

Q. So your indication just now that the company has to file an affidavit, but that a broker did not have to file it, was incorrect, was it not?

A. It was incorrect to that extent.

Q. Isn't that extent the full extent, that it was absolutely contrary to the facts?

A. It was not incorrect in that a broker does not have to file the same sort of affidavit filed by the company. The company files an affidavit specifically setting forth that all policies are countersigned, and so forth, as required by law but in the application for a license as broker, which is sworn to, the broker agrees to comply with all provisions of the Virginia Statute?

Q. What you refer to as an application is a statement under oath, is it not?

A. I think so.

Q. And that is an affidavit, is it not?

A. That is my understanding.

[fol. 744] Q. What words of the statute justify the defendants declining to issue a license as resident agents to the plaintiffs in this case with whom and with whose status I believe you to be familiar: William H. Osborn, Lewis C. Adair and Channing F. MacNeil?

A. I believe all of these gentlemen are salaried employees of companies and I believe Branch Managers, and would not, therefore, come within the definition of a resident agent, but would be classified as Special Agents.

Q. My question was directed to ascertaining from you what portions of the 1938 Act say that because a man is paid by salary, rather than by commission, he may not be licensed as a resident agent but may only be licensed as a company representative or special agent?

Mr. Staples: This question is objected to as the witness is not an attorney at law and is not in a position to state the various statutory provisions applicable to the general status of the law as construed in his office. He has not been offered as a witness for that purpose but has been offered as a witness to state the construction which the Insurance Department and the State Corporation Commission have placed upon the Act. Whether this interpretation is justifiable, or not, is a question which counsel may argue to the court with the statutes, if he so desires, but not with the witness and I advise the witness it is not necessary for him to answer questions of this kind, that it can throw no light upon the case and [fol. 745] he is not qualified to engage in a legal debate with counsel for the plaintiffs. Opposing counsel may take the question up with the court, if he desires to compel an answer to this type of question.

By Mr. Christian:

Q. I call on the witness to either answer the question or refuse to answer.

A. On advice of counsel I decline to answer.

Q. I now ask you did I not understand correctly that you have been testifying today as to the manner in which the defendants in this case construe this Act and intend to enforce this Act and have given that testimony in the capacity of their subordinate in charge of matters of construction and enforcement of this Act?

A. I gave the answers, giving the administrative construction that the Bureau of Insurance has placed upon the Act.

Q. Do you say then that I initiated the expressions in your letter of September 9?

A. I would say I just don't recall. I wrote the letter. I do not recall how the expression originated.

[fol. 746] Q. Before you sent that letter to me did you talk to Mr. Bowles or Mr. Fletcher or Mr. Hooker or Mr. Ozlin as to its contents and read it to them, or any of them, and secure their approval of it or the approval of any of them?

A. I don't recall. I probably took it up with Mr. Bowles. I just don't recall.

Q. Would you have had authority in your relations with these defendants to write that letter and deliver it to me without talking to any of them?

A. Yes, I think I would.

Q. Did you ask their permission to come here and testify today or ask the permission of any of them to come here and testify today?

A. I came here today with their knowledge and consent.

Q. Did they know before you came here that you were going to testify as you have about paragraph 16 of the answer?

A. Yes, they knew that I was going to testify.

Q. Did they tell you to do that or did you tell them you proposed to do that and ask their approval of it?

A. The construction was generally discussed at that time and that is the construction that had been put on the Act and it was given with their approval and consent.

Q. Who put that construction on the Act as the prime mover—they or you?

A. It has grown up. That construction has grown up gradually, I will say, over a long period of time.

Q. In whose mind has that construction come to be a fact —theirs or yours or both?

[fol. 747] A. I would say both.

Q. Primarily, however, of yours, would you not say?

A. Of course—the Bureau of Insurance. These questions originate largely in the Bureau of Insurance and matters are discussed with them and we do express opinions.

Q. Are all of these matters of construction about which you have been testifying constructions put forth by you as proper and accepted by them rather than constructions put forth by them as proper and imposed on you?

Mr. Staples: This question and line of examination are objected to as the witness has been introduced for the purpose of proving the facts as to how the statutes are construed and how they will be enforced and that is what the plaintiffs in this case are seeking relief from, as to the soundness of that construction or whether some unconstitutional construction should be placed upon the statute so as to come within the desires of opposing counsel, is question for the court. The Attorney General of the State will seek to maintain the soundness of the construction and that is not the function of this witness. The question of fact now sought to be established is what construction is placed upon the Act, not whether it is sound or not, and I again advise the witness that he need not indulge in an argument of long legal lines with opposing counsel. That is the function, not of his office, but of the Attorney General's office.

By Mr. Christian:

Q. Will the witness please answer the last question or, if he declines to do so, state his declination?

[fol. 748] A. I decline to answer on the advice of counsel.

Q. How many persons hold licenses as Special Agents in the current license year?

A. I don't know. I haven't counted them.

Q. I think you said there were 2,959 persons holding licenses in that year as resident agents?

A. Yes, sir.

Q. Please estimate the number holding licenses as Special Agents, if you can, and if not, go to your office and arm yourself with that information and return and give the evidence.

A. I can get it. I would not like to estimate it.

Q. Is it agreed that you will procure that information and furnish it to the reporter to be a part of the record?

A. I will be glad to do it.

Q. If you will promise to do that, then I am willing to pass it up for the present.

A. I will get it.

[fol. 749] Q. And you will communicate it to the reporter?

A. That is right.

Mr. Christian: It is agreeable to Mr. Staples to be put in the record by the reporter?

Mr. Staples: Yes.

By Mr. Christian:

Q. How many licenses are held by those 2,959 persons?

A. There again I can't answer.

Q. Will you kindly supply that information to the reporter?

A. I can do it. It is going to take some little time.

Mr. Christian: Is it agreeable to counsel that that be furnished to the reporter and incorporated in the record?

Mr. Staples: That is agreeable.

By Mr. Christian:

Q. Will you also find out and put in the record the number of licenses held by the persons who hold licenses as special agents?

A. Yes, sir.

Q. Please say how much of the $9,830,634 of premiums taxed by Virginia, other than fire insurance, life, title and ocean marine insurance companies, is non-cancelable health and accident insurance?

A. I can furnish that later.

Q. Will you please say how many casualty and surety companies were authorized to do one or the other or both lines of business in Virginia in 1937?

A. I can do that later.

Q. Will you please say how many of those were domestic [fol. 750] companies and how many were foreign or alien companies and also say how many were stock companies and how many were mutual companies?

A. I can file that later.

Q. Will you kindly include in your figures a showing of the premiums in addition to those included in the stock figure which I have mentioned for the mutual companies and

divide those mutual figures into domestic mutuals and foreign or alien mutuals?

A. Yes.

Q. Can you show, in stating the number of companies of various kinds holding licenses to conduct a casualty and surety business, or both, which ones have no premiums included in the figures we are discussing except premiums for non-cancelable health and accident insurance?

A. Yes.

Q. I would like you to show the names of these companies, as well as their number, if that is agreeable.

A. I will do that.

Q. Will you kindly also give the names of the companies whose casualty and surety business is limited to one or more of accident, health, and non-cancelable accident and health and which did not return for taxation any premiums in any other lines of casualty and surety business?

A. Yes.

Q. Will you kindly also show the amount of premiums included in your figure of $9,830,634 representing premiums returned for taxation by companies not engaged in any lines of casualty and surety business except accident or health or non-cancelable accident and health or more than one of these three classifications.

A. Yes.

[fol. 751] Q. Is it generally true to say that many companies, who are principally life insurance companies and do not engage in the casualty and surety business except by way of accident and health benefits in their life insurance policies, return the premiums for these benefits for taxation as casualty premiums?

A. It is true that a number of life insurance companies do write accident and health business largely on separate policies which are classified as casualty.

Q. Don't you also include in casualty premium returns the premiums for health and accident benefits which are conferred by riders attached to their life insurance policies and what are known as double indemnity and total disability and other benefits?

A. The double indemnity and total and permanent disability benefits are not included in those casualty figures.

Q. Will you check up on that when you get back to the office and if you find you are incorrect, then make a correction on the record?

A. I will.

Q. In stating these figures will you kindly state what part of the $9,830,634 was returned for taxation by each of the following, viz:

Travelers Insurance Company,
Travelers Indemnity Company,
Fidelity & Casualty Company,
Aetna Casualty and Surety Company,
United States Fidelity & Guaranty Company,
Maryland Casualty Company,
Employers' Liability Assurance Corporation, Ltd.,
New Amsterdam Casualty Company,
Century Indemnity Company.

[fol. 752] A. Yes.

Q. You have given certain fire insurance figures which I do not think material but which Mr. Staples does and I would like you to file data separating the $10,568,780 of fire insurance premiums referred to into the part returned by domestic companies and the part returned by foreign companies. I would also like you to add the amount of fire insurance premiums for mutual companies and divide it into domestic and foreign. In this question where I have used the word "foreign" I mean it to include foreign and alien companies.

A. I will.

Q. On yesterday I believe you testified that the Virginia Statute now in controversy divided and classified into two separate classes or groups agents engaged in Virginia in the business of procuring contracts and agents engaged in the business of assisting and supervising others in procuring contracts?

A. I recall that I did state that agents were divided into two general classes.

Q. And that those were the two classes.

A. And divided generally into the company representatives and resident agents.

Q. Did you not say just what I have stated you said, that the two groups were, (1) a group engaged in the business of procuring contracts and (2) a group assisting and supervising others in procuring those contracts?

A. I do not think I used that expression.

Q. I ask you to point out the words in this Virginia [fol. 753] Statute which have divided and classified into

two separate classes or groups the persons engaged in Virginia in the business of procuring or of assisting and supervising others in procuring the making of certain insurance casualty and surety contracts.

Mr. Staples: I repeat the same advice to the witness with reference to argument with opposing counsel as to the provisions of the statute.

A. On advice of counsel I decline to answer.

Q. I point out to the witness that I am simply cross-examining him to ascertain the basis of a statement he made on examination in chief.

Mr. Staples: I still repeat the advice to the witness.

A. On advice of counsel I decline to answer.

Q. While I have not been aware of making the contention, in behalf of the plaintiffs, that a person may be licensed at one and the same time both as a special agent and as a resident agent, in a remark of counsel, and perhaps in a statement of the witness on examination in chief, it was said that one person could not at one and the same time hold both of these types of licenses. Will the witness point to any regulation or ruling promulgated by the defendants or to any language in the statute on which he based his testimony or his counsel based the statement?

A. I decline to answer on advice of counsel.

Q. Considering my question amended to show you as hav-
[fol. 754] ing testified that one person can not at the same time hold a resident agent's license and a special agent's license to represent one company, will you answer the question?

A. On advice of counsel I decline to answer.

Q. Will you kindly state what person promulgated the construction of this Act where it refers to usual and cus-
[fol. 755] tomary commissions as meaning only a producer's commission and not the large commission provided for in contracts which provide for the payment of a general agent's commission or a regional agent's commission?

A. The ruling was promulgated by the Bureau of Insurance.

Q. And what individuals in that Bureau determined upon the ruling?

A. A letter to that effect was, I believe, written over Mr.

Bowles' signature at the conference with Mr. Bowles and others.

Q. Who wrote the letter?

A. I don't recall.

Q. Did you take part in the conference?

A. I took part in it.

Q. Were any agents there?

A. Probably there were.

Q. Don't you know there were, that the agents came up here and urged that ruling on the Bureau?

A. The agents were interested in that.

Q. And the agents recommended that ruling and construction did they not?

A. Some interested agents did, I think, come in and discuss the matter with Mr. Bowles and myself on numerous occasions.

Q. And they all urged that construction upon you, did they not, and pointed out that another construction might lead to difficulties?

[fol. 756] A. Another construction, of course, might lead to inequalities.

Q. Another construction might also lead to persons, who were only compensated by producers' commission under their contracts with their companies, getting all of their countersigning business instead of these general agents who came to see you getting what they regarded as an adequate share of, might it not?

A. Of course, under another construction it might be that an agent receiving a lower rate of commission would receive more of the business from non-resident brokers, and so on.

Q. Were not these gentlemen who came to see you interested in the matter as general agents, that is to say, persons with general agents' commissions provided to be paid under their contracts rather than persons with no contracts under which they get general agents' commissions on their casualty and surety business.

A. Of course, I cannot say whether they definitely had general agents' contracts or not but in all probability they did.

Q. Did not these persons include among their number representatives of Davenport Insurance Corporation and Tabb, Brockenbrough & Ragland and Gibson, Moore &

Sutton and Boswell & Curtis and Mr. Edmond DeJarnette, or some of them?

A. It included some of them; I don't believe all.

Q. At these conferences about the construction of this Act and the manner in which it should be administered, leading to this construction we have just been discussing [fol. 757] and to the getting out of that letter of June 23, 1938, and the forms therewith, were representatives of the companies present or were representatives of assureds present and participating in the conferences?

A. I don't recall that there were representatives of either the assureds or the companies present, but we would have been glad to discuss this matter with them should they have desired to do so.

Q. Did you call on them to take part in these conferences?

A. I do not recall that we called on either the companies or the assureds to take part.

Q. Did you inform the companies or the assureds that these conferences were being held?

A. I do not believe we did.

Q. Will you kindly say whether it would operate to the disadvantage of people like Tabb and DeJarnette and Boswell and Davenport for you to have given the construction to the words "usual and customary" that they referred to the commission to which the individual agent was entitled for producing a contract for his individual company, instead of giving those words the construction that they only applied to a producer's commission, whatever might be the usual and customary commission that the particular agent usually and customarily received for production from his company?

A. I think that this question could probably be better answered by using an illustration. If we assume that a general agent was actually receiving a commission of 25% and that a producing agent was receiving a commission of [fol. 758] 20% and if, under those circumstances a policy were issued through and countersigned by the general agent receiving 25%, and if the statute were construed to authorize the general agent to pay half of the commission he received, he would be required to retain at least 12½% of the premium, whereas a producer who received only 20% commission would be required, under the same circumstances, to retain only at least 10%.

Q. Does it follow from that that it might ordinarily be expected that most of this countersigning business would go to people compensated only as producers so as that the company, under your illustration, would only have to pay 10% of the premium for the Virginia countersignature?

A. I think in all probability it would tend to refer that business to so-called producing agents.

Q. So the effect of your construction is to enable the general agent to do the signing just as cheap as an agent who only gets a producer's commission could do it?

A. The effect of the construction is to put all of those agents on a parity.

Q. In construing this law for Mr. Staples I understood you to construe it yesterday as permitting a person licensed as a special agent to countersign a contract covering in Virginia, provided the countersignature required by Section 4222 of the Code to be furnished by a person licensed as a resident agent had previously been affixed thereto; is [fol. 759] that correct?

A. I did not use the word "previously". I said as long as it was also countersigned.

Q. What words of this statute are the basis of that construction of the law that you gave to Mr. Staples?

Mr. Staples: I repeat the same advice I have given to the witness with reference to similar questions.

A. On advice of counsel I decline to answer.

Q. When was this ruling promulgated that the word "made" in the first section of Section 4222 means "countersign"?

A. I think that is a construction that has been put on the statute by custom over a good many years and by administrative ruling.

Q. When was this construction about which you testified yesterday that the phrase "duly countersigned" in the second sentence imposes any obligations on the countersigning agent other than to countersign the contract, that is, to affix his name thereto?

A. I think there again there is a question of custom established over a long period of time.

Q. This law was in effect until June 21, 1938?

A. No, but we have had the countersignature law for a good many years.

Q. Will you kindly refer me to any countersignature law [fol. 760] that existed before 1936 and, in this connection, I hand you the Code of Virginia and refer you to Title 38 thereof, entitled "Insurance" and to the notes at the bottom of each section under that title, showing the history of the section.

Mr. Staples: I repeat the same advice I have heretofore given the witness with reference to questions of this type.

A. On advice of counsel I decline to answer.

Q. I call the attention of Mr. Moore to the fact that he [fol. 761] has just finished stating to me that we have had the countersignature law in Virginia, as I understood, for many years and that the question he is refusing now to answer is simply a question designed to find out what law he is talking about. Does the witness still decline to answer?

Mr. Staples: I think the witness' answer as to this legal question is correct and I will undertake to justify the same to the court from a study of the statute but I do not feel it proper for opposing counsel to try to engage a layman, who has never studied law, into an argument and debate as to the legal construction of statutes. I do not think this would be fair to the witness and it certainly would not be enlightening to the court.

A. I decline to answer on the advice of counsel.

Q. Assuming there has been a countersigning law, as the witness claimed there has been for many years, does the witness mean to be understood as claiming that for many years the word "countersign" as contained in Virginia statutes has been the subject-matter of construction by the Insurance Bureau?

A. I do not recall specifically but there undoubtedly have been rulings relating to countersignature over a period of years.

Q. Can the witness point to any ruling ever made, until a time subsequent to conferences between himself and the Attorney General, after the defense of this pending suit became an issue, when the word "countersign" was defined? [fol. 762] A. I do not recall any, but I could not give a definite answer until I look through our files.

Q. Will the witness then include that information in that which he is to furnish to the reporter, along with a copy of the rulings in question, if he finds any?

A. I will look through the rulings.

Note: The Notary subsequently received from the witness certain papers of which the following are copies:

[fol. 763] VIRGINIA

Separate Policy Required on Property in State

Hon. Joseph Button, Ins. Com'r

January 5, 1921.

To All Insurance Companies Transacting Business in Virginia:

All forms of insurance against loss or damage on persons and property located within the boundaries of the State of Virginia shall be issued under a policy which shall be separate and distinct from all insurance which covers persons and property located in any other State. All insurance, whether excess, floater, blanket, general (reporting) cover, schedule, group or any form which has for its object the insurance of risks in the State of Virginia in connection with risks in other States, shall be held to be included under this rule.

The law provides that policies of insurance (life excepted) shall be issued through and countersigned by agents residing in the State. This provision does not apply to railroad companies or other common carriers engaged in interstate commerce.

A company violating this provision of the law subjects itself to the penalty of a fine of not less than one hundred dollars nor more than five hundred dollars for each offense and possible suspension or revocation of its license.

Licensed brokers are not permitted under the law to place insurance in any company or association, or with any firm or person not licensed in this State; nor are licensed agents allowed to divide commissions with non-licensed agents or brokers.

The Bureau bespeaks the co-operation of all interested parties in the enforcement of this law.

[fol. 764] VIRGINIA

Reporting General Cover Contracts

Hon. Joseph Button, Ins. Com'r

(Extract from Letter)

January 10, 1921

(Reply to Inquiry Concerning Ruling Virginia I)

Where it is desirable that risks in Virginia be covered for insurance under the general cover contract form, the general cover contract issued must include property in this State only, and shall have no property located in any other State written in conjunction therewith.

The policies written underlying this contract must be written at the rates applicable to the risks covered as published by the rating bureau of which the insuring company is a member or subscriber. Such policies shall not be made save through regularly constituted agents of such companies residing in the State of Virginia. This department holds that the resident agent law of this state was enacted with the intent and purpose of requiring the companies to do business in this State through resident agents and to procure for these agents their usual compensation and that, therefore, the signature of a contract by an agent without receiving the usual compensation or for a nominal fee is a direct violation of this law. This, of course, does not apply to company employees who receive a fixed salary and bear a certificate of registration as agent from this department.

Policies and forms must never be signed in blank. These signatures should be made only as the actual execution of the contract.

[fol. 765] Virginia

Countersignature

Hon. Joseph Button, Ins., Com'r

(Extract From Letter)

October 7, 1927.

DEAR SIR:

Replying to your letter of October 4th, I beg to advise that all insurance policies issued by a Mutual Insurance Com-

pany must be countersigned by an Agent resident in this State. Section 4222 of the Insurance Laws have been interpreted as requiring countersignature of all policies of insurance except life, and this section is applicable to mutual insurance companies as well, under the provisions of Section 17 of the Mutual Act, Chapter 259, Acts of 1920, page 123 of the Insurance Laws of 1924.

Trusting this to be the information you desire.

By Mr. Christian:

Q. While it is not entirely clear to me what legal opinions you can properly give and what legal opinions you cannot properly give, I understood on your examination in chief that you said, according to the construction of this 1938 Act by the Department, a Virginia resident agent may countersign at the request of a company. In Section 4226a of this Act, I notice a provision that a resident agent or agency may write contracts at the request only of such other resident agent or agencies when such agent or agencies are properly licensed to transact the class of business involved in such exchange and licensed non-resident insurance brokers who may be authorized by law to broker such contracts and I do [fol. 766] not see any exception in that language which says they may write such contracts at the request of their companies or of employees of their companies, in other states, not licensed in Virginia. Will you kindly let me know when this construction, reading into this language the permission to write such contracts at the request of companies and employees in other states not licensed in Virginia, was promulgated?

Mr. Staples: This question is objected to as undertaking to engage the witness in a discussion of the provision of the statute. I will state for the benefit of opposing counsel that the word "only" as quoted by him from the statute is construed by the Department to exclude other types of agents and has no purpose to exclude the company itself. It is intended to restrict the type of agent at whose request a resident agent may countersign a policy. I therefore advise the witness that it is not necessary for him to answer a question predicated upon a lot of legal quotations. If he wants to ask the witness the simple question as to when a ruling was

promulgated, I will advise the witness to answer but I do not think the question should be complicated with a lot of improper matter contained in it.

A. I decline to answer on advice of counsel.

Q. Can you tell me when this ruling was promulgated to which I have referred?

[fol. 767] A. What ruling is it you refer to?

Q. I refer to a ruling which I understood you to say had been made or a construction which I understood you to say had been given of the 1938 Act as permitting resident agents to countersign at the request of a company or of an employee of the company not licensed as an agent in Virginia?

A. I do not know that I can give a specific date but the general construction has been that a resident agent may countersign at the request of the company as long as he receives the full commission.

Q. Has that general construction to which you refer been made before or after the institution of this litigation?

A. That construction, I believe, has been put generally on the law since the 1938 Act has been in effect.

Q. Will you please file a copy of any notice or communication of this construction which has been issued to the agents or the companies, or both, or if there has been no notice given to anyone of the construction, state that fact.

A. I do not believe that any general circular letter has been written.

[fol. 768] Q. Has any kind of a letter been written?

A. It may have been written in individual cases. I don't recall.

Q. Don't you recall it has not been written in any case until after this suit was started?

A. No.

Q. I call on the witness, if he can find any such letter which has been written before this suit was started, to file a copy of it.

A. It seems to me that it would be quite impractical to look through all the correspondence of the Bureau of Insurance to determine that.

Q. I understood you, over my objection yesterday, to swear that the defendants are enforcing this Act in accordance with certain interpretations which are the defendants' interpretations of the Act. One of these interpretations is that when a contract is countersigned by a resident agent the

act of his countersigning the same imposes on him the same obligations with respect to supervising the contents and form of the contract and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff in connection therewith, as customarily applies in cases where the resident agent himself negotiates a similar contract. I ask you does this interpretation presuppose that there are obligations with respect to future services in a case where the resident agent himself negotiates a similar contract?

A. If I understand your question correctly, I feel that [fol. 769] an agent, producing business on his own account, has certain obligations to his policyholders.

Q. Would that be so irrespective of the contract or understanding between the agent and the policyholder?

A. I feel that he would have those obligations under any circumstances.

Q. Even if he had contracted that he was not to have them; is that right?

A. Of course, they might have some agreement but I still feel that an agent has obligations to his policyholder.

Q. Regardless of the agreement or understanding between them?

A. I don't know what effect an agreement of that kind would have upon the relationship.

Q. Is there any statute to which you can point imposing those obligations upon a producing agent?

A. I don't know of any statute which specifically imposes those obligations.

Q. Are there any court decisions to which you can point establishing the fact of the existence of such obligation?

A. I am not informed on the court decisions.

Q. How old are you?

A. 34.

Q. How long have you been with the Insurance Department?

A. Since 1932.

Q. Were you an agent before then?

A. No.

Q. Is your position with the Insurance Department a whole-time position?

[fol. 770] A. Yes.

Q. That is you- only connection with the insurance business?

A. Yes.

Q. When was this interpretation about which we have been discussing as specified in sub-paragraph (b) of paragraph 16 of the answer, placed on this Act?

A. I feel that there again is a matter of custom which has grown up in the insurance business.

Q. Is it not a fact that no such interpretation was placed on this Act except to the extent that you or you and Mr. Bowles agreed to assert its adoption in conference with Mr. Staples within the past few weeks in preparation for you to give this testimony?

A. I do not know that there ever has been a written ruling to that effect, but I feel that the fact has been established by custom.

Q. Leaving out whether there has been a written ruling to that effect, and having reference to whether the occasion had ever come up for an interpretation of the Act in this respect, will you say whether such occasion did arise until Mr. Staples conferred with you, preparatory to giving your testimony?

A. I do not believe that we have had an occasion to issue such a ruling but I still feel that the agent under such circumstances owes that obligation.

Q. Not having reference to issuing rulings, but having reference to whether the matter was discussed at all, I ask you was it discussed at all except when Mr. Staples brought [fol. 771] it up and discussed it with you?

A. I don't recall the question having been discussed.

Q. And when was the first day that it was discussed?

A. Do you mean by that day——

Q. The first day that this interpretation referred to in sub-paragraph (b) was the subject-matter of discussion with any person of the Bureau, as far as you know, or with anybody? I want to know the first day. Was it day before yesterday or the day before that or when?

A. If you mean by that when was the particular wording of paragraph 16 discussed, it was discussed yesterday and I believe the day before.

Q. Not having reference to the particular wording but to the substance of sub-paragraph (b), was its substance ever discussed with anybody until you discussed it with Mr.

Staples before you went on the stand in this case, as far as you know?

A. As far as I know. Of course, I do not know with whom Mr. Staples has discussed this matter. I think we have discussed it with him in the last few days.

Q. And, as far as you know, nobody in the Bureau has discussed the substance of that sub-paragraph until you and Mr. Staples discussed it?

A. As far as I know.

Q. Isn't it a fact then that you have undertaken for the defendants to adopt that interpretation following the conference between you and Mr. Staples?

A. I don't know that that is a fair statement. As I have [fol. 772] stated before, we feel and have felt for a long time that an agent owed obligations to his policyholders as I have already stated.

Q. Have you ever given expression, or have you knowledge of anyone of the personnel connected with the Insurance Bureau giving expression to that interpretation of this Act until you gave it here on the stand?

A. I do not know. Possibly they have. I just do not know.

Q. You know what you yourself have done, don't you?

A. Yes.

Q. Can you say whether you ever gave expression to such interpretation until you gave it here on the stand?

A. I don't recall discussing the matter.

Q. Am I right that it was you and Mr. Staples who had that conference?

A. You mean by that Mr. Staples and I discussed Section (b)?

Q. Yes.

A. The provisions of that sub-section (b) were discussed with Mr. Bowles and myself and with two members of the Corporation Commission.

Q. I ask you to say generally, without imposing an undue burden on you, of trying to speak verbatim, who arranged that appointment and when the appointment was sought, what was declared to be its purpose and what was said by the parties at the conference?

Mr. Staples: This question is objected to and the witness [fol. 773] is advised that he need not answer the question as communications between counsel and representatives of

the State are privileged and not subject to be pried into in this manner. I have no objection to stating, however, that I arranged the conference myself and discussed the matters involved in this suit with the members of the Corporation Commission referred to, Mr. Bowles and Mr. Moore. This, I think, is all that counsel is entitled to have in the record on the subject and I advise the witness not to answer any other questions relating to the interview.

A. I decline to give any further information, as advised by counsel.

Q. Will you please state whether you at that conference expressed your approval of this sub-paragraph (b)?

A. I decline to answer on the advice of counsel.

Q. Will you say whether anybody except Mr. Staples brought up this construction mentioned in sub-paragraph (b) as a proper construction to be given to the Act?

A. I decline to answer on the advice of counsel.

Q. Will you kindly say how a Virginia countersigning agent is to supervise the contents and form of the contract which he is to countersign in the following respects, viz: How is he to know whether the party named as an assured is correctly named?

A. Do I understand you to mean by that whether or not the exact or proper party is named in the policy?

Q. Yes. Richard Roe might be the assured and, in fact, Richard Roe might not want to be the assured and the [fol. 774] policy might insure John Doe. How is the countersigning agent to determine as to whether the policy correctly states the person or firm or corporation who is seeking the insurance information in question?

A. I think that would be up to the countersigning agent to determine just how he would proceed but I still feel that he owes an obligation to the policyholder to review the policy form for correctness and information included in it generally.

Q. In the case of a contract coming to Virginia from California for this required statutory countersignature and which comes directly from a branch office in California or from a general agent or local agent there or from a broker there or from the Home Office of the company, is it your thought that the Virginia countersigner should ascertain the address of the assured named in the contract and write

that assured a letter to make inquiry as to its correct name and whether it wants the insurance?

A. I feel that the exact method used is up to the agent, that he still has his obligation to perform.

By Mr. Christian:

Q. In the supposititious case I cited would you hold that the agent had defaulted in the obligations which you say you construed to rest on him if he assumed that the assured named in the contract when it came to Richmond really wanted the insurance and if he assumed that the name of the assured was correctly stated therein?

A. I decline to answer on the advice of counsel.

[fol. 775] Q. I ask you whether the omission to verify the fact that the named assured wishes insurance and is correctly named in the contract is a breach of duty under this very interpretation which you have said imposes certain obligations upon the agent?

A. I decline to answer on the advice of counsel.

Q. I call your attention to the fact that you have also said in your examination in chief that you are the very person in the Insurance Bureau who handles agents and agency matters and the licensing of agents. Do you still decline to answer?

A. I decline to answer on the advice of counsel.

Q. Leaving aside then the question of whether the assured wants any insurance and whether he is correctly named and proceeding to others of the contents and form of the contract, I ask you under your interpretation of this law, as you have sworn it to be, is the Virginia countersigner to inquire as to whether the amount of insurance provided by the contract is as desired by the assured before he countersigns it or is he to assume its correctness and, in the latter case, will that be deemed by you, as the officer having charge of agency matters and agents and licensing matters, a compliance with his obligation which you say you interpret this Act to impose on him?

A. I decline to answer on the advice of counsel.

Q. Going on with this line of questions, I desire to know whether such an agent has imposed on him, by his assuming the relationship of countersigner to the transaction, the obligation to check up and find out, if a steam-boiler policy [fol. 776] has come to him, whether the assured wants that

kind of policy or a workmen's compensation policy, or some other type, or may he assume that the policy is correct in this respect?

Mr. Staples: I will state that I give the witness the same advice as to the previous question for the reason that the witness has no jurisdiction or authority whatever to either prescribe the specific duties of agents with reference to general cases arising in the line of their business, nor has he any jurisdiction to pass on whether or not an agent has been negligent in the discharge of that duty. His jurisdiction is limited to complaining of an agent if he feels that he has been incompetent in the discharge of his duties, and the witness, in discharging that duty, would necessarily make an investigation of the customs prevailing with reference to similar transactions in any case which might arise. He is not required to have at all times knowledge of all of these customs and doubtless does not have, as he has not had any detailed experience in the business. For that reason I feel it is a wholly unnecessary consumption of time to answer questions of this type which are so absolutely immaterial to the issues in this case and, therefore, I advise the witness not to answer.

A. I decline to answer on the advice of counsel.

[fol. 777] Q. You may have interpreted my questions as calling on you for a mere personal statement and, if there is any objection to the form of the question in that it should have called on you to express the opinion of the Bureau as to the duty of the countersigner in various circumstances which I have suggested in my last few questions, I would like you to interpret my question as calling for an expression of the views of the Bureau rather than your personal ones, if you know those views?

Mr. Staples: I think this is equally objectionable. In fact, I think it would be highly improper for the Bureau to express an opinion in advance of what its attitude might be toward any imaginary case or moot case of violation, or presenting a charge of violation of an agent's duties where the actual case is not presented. It would be just as improper for the Bureau to be placed on record in a moot case of this kind, without having given the matter due and proper consideration, as it would be for a judge of a court to express

in advance what his decision might be in a case which would be presented to the court.

A. I decline to answer on the advice of counsel.

Q. When you had this conference and it was determined that it was in order to adopt the interpretation, among others, referred to in sub-paragraph (b) of paragraph 16, was there any discussion of the extent of the obligation [fol. 778] which paragraph (b) said is imposed on the countersigning agent with reference to supervising the contents and form of the contract to show the limit of that obligation or the field of that supervision?

A. I decline to answer on the advice of counsel.

Q. I will ask you about the producing agent who, in my supposititious case, would be in California. Would you have any difficulty in saying that it was the duty of that party who produced and wrote the contract to be certain before he asks the Virginia countersigner to countersign it that the designated assured desires insurance?

Mr. Staples: The witness is advised to the same effect for the reason that it would be highly improper for the Bureau of Insurance to undertake to express an opinion about the duties of agents in other states.

A. I decline to answer.

Q. Would you, as a representative of the Bureau, or the Bureau, have any doubt about the obligation resting on that producer to cause the assured to be correctly named when he wrote the contract?

A. Same answer.

Q. Would the Bureau have any doubt about the existence of the duty on that producer, if boiler insurance, rather than workmen's compensation insurance is desired by the assured, to see that the policy is written upon a boiler form rather than a workmen's compensation form?

A. The same answer.

[fol. 779] Q. Would the Bureau have any doubt that it was the duty of that producer in writing, or causing the policy to be written, to have the amount of insurance as desired and agreed with the assured?

Mr. Staples: Same advice for the same reason. I confess I am unable to see any possible bearing on this case

of what the Bureau of Insurance in Virginia might think about the duties of an agent in California. It is just an illustration of the ridiculous line into which this examination has embarked.

A. Same answer.

By Mr. Christian: Coming now to your testimony that, as the Bureau interprets this Act, a Virginia countersigner, by his act of countersigning, has imposed on him the same obligations with respect to future services to be rendered during the life of the contract to the assured and to the company as if he had been the producer, I desire to ask some questions on that subject, but if it is the position of the Attorney General that he will advise the witness to answer none of them and if the witness plans to follow that advice and answer none of them, I will forego, for the present, pointing out the ridiculousness of this construction [fol. 780] by demonstrating by questions put to the witness, and his inability to answer them with satisfaction to the defendants' position in this case, the various services which, in many cases, might be rendered to such a California assured which the Virginia countersigner would not be in a position to render without going out to California or conducting correspondence with California.

Mr. Christian: I will ask the Attorney General to state whether he will advise the witness to answer none of these questions and will ask the witness to state whether he will follow that advice.

Mr. Staples: I think it would be highly improper for the witness to undertake to anticipate in advance what the view of the Bureau might be with reference to any specific case which may arise in the future and become the consideration before it of disciplinary action to an agent. For that reason I advise the witness not to answer any questions along this line.

A. And I follow his advice.

Mr. Christian: As there may be some misunderstanding of what I am after, inasmuch as the Attorney General seems to think I am talking about a case of disciplining some particular agent, I will ask one question to illustrate the type of numerous questions which I should ask, provided I could get answers thereto.

Q. I ask the witness to say, in the case of my supposititious California contract, how the Virginia countersigner would proceed to render to the California assured the serv-
[fol. 781] ice of conferring with that assured and advising that assured as to the advisability of changing the insurance contract from the company with which it is made to some other company, constituting, in the opinion of the countersigner, a better company from the standpoint of the assured? Would he write to the California assured or would he go out there and talk to that assured or would he have the assured come to Virginia to discuss it, or how would he go about this?

Mr. Staples: The same advice for the same reason and, in addition, that the question merely puts up a straw man to try to knock him down.

A. I decline to answer on the advice of counsel.

By Mr. Christian:

Q. Would the Bureau consider that the Virginia countersigner had defaulted in the obligations imposed upon him by this Act as construed by the Bureau, if, though holding the view that the contract, in the interest of the assured, had better be with another company, the Virginia countersigner did not serve the assured by making a suggestion accordingly?

Mr. Staples: Same advice for the same reason.

A. Same answer.

By Mr. Christian:

Q. At this conference about which we have been speaking, when it was agreed that you would come here and say that this was the interpretation, which I understand took place day before yesterday, was it not brought out that there were certain services which a producing agent in the locality of production could render conveniently and which
[fol. 782] could not be conveniently rendered by the Virginia countersigner, situated at a distance from the point of production and without any acquaintance with the assured?

Mr. Staples: Same advice.

A. The same answer.

Q. Am I correct as to these solicitors that the law requires that every insurance agent or agency shall file a list of solicitors authorized to solicit in behalf of the agent or agency and that each solicitor is required to secure a certificate of registration from the commission for each company represented by the agent or agency for which he is to solicit contracts?

A. The answer to that is yes.

Q. I ask you to file, as Plaintiff's Exhibits 25 and 26, two statements issued to the press by the defendants Bowles in early November, 1938, on the subject of this law.

A. I do not have copies of any such statements and those statements are not a part of the official records of the Bureau.

Q. Did you attempt, before going on the stand this morning, in accordance with my request to find copies of them?

A. I did make inquiry for them but was not able to locate them.

Q. Did you ask Mr. Bowles for copies of them?

A. I asked Mr. Bowles if he had a copy of them.

Q. And what did he say?

A. Mr. Bowles said that he had a copy of one of the magazines in which one or both—I don't recall—statements appeared at his home but he did not have it at his office.

[fol. 783] Q. I hand you page 8 of the Journal of Commerce and Commercial, New York, of Wednesday, November 9, 1938, and refer you to the two statements of Mr. Bowles as quoted therein and reading as follows:

"1. In view of the position taken by Mr. Bennett, General Counsel for the National Association of Insurance Agents, in his article in the last issue of the American Agency Bulletin, a conference of all parties interested in the Virginia agents law, such as I suggested at Norfolk a few days ago, would, of course, be futile and will not be further pursued, gracefully yielding any preconceived ideas I may have had in the matter to the wisdom and experience of Mr. Bennett."

Do I read that correctly as quoted in this paper?

A. You are reading correctly from the paper.

Q. I now read the second statement as therein quoted and will ask you do I read it correctly.

"It is to be regretted that Mr. Walter H. Bennett, General Counsel for the National Association of Insurance Agents, construed my remarks made before the Norfolk Association of Insurance Agents as being inspired by a feeling of 'irritation.' I can assure him that no such feeling existed but, on the contrary, I was actuated solely by a spirit of sincere cooperation.

"Mr. Bennett's 'message' as he termed it, published in the last issue of the American Agency Bulletin, convinces [fol. 784] me, as Insurance Commissioner of Virginia, that I got out on the wrong limb by sponsoring the agents' bill, since the agents themselves, according to Mr. Bennett, do not know what they want yet. I had been told by the Virginia Agents Association that they did know what they wanted and, acting upon that theory, I used my influence and the influence of this Department to get them what they wanted by appropriate legislation.

"It is to be hoped that Mr. Bennett, as General Counsel of the National Association of Insurance Agents, will be successful in bringing about a meeting of minds before any further agents' laws are introduced in the Virginia Legislature."

Q. Cannot you confirm the fact that what I have read is a true reproduction of the statement issued to the press in November, 1938, of which they purport to be quotations?

A. I can ask Mr. Bowles whether or not they are correct.

Q. Don't you know whether or not they are correct?

A. I assume that they are correct but I have not compared them.

Q. You know that such statements were issued at that time to the press, do you not?

A. Yes, some statements were issued.

Q. Did you take part in the preparation of the statements that were issued?

A. I talked them over with Mr. Bowles. As I recall it, he prepared them himself.

Q. Did you not see them in their final form before they were issued to the press and say you concurred in them?

[fol. 785] A. I saw them in the final form, yes.

Q. I ask you again are not these quotations which I have put in the record correct, as far as you know and believe?

A. As far as I know, they are correct.

Q. If they are not correct you can, when you come back

here to supply this additional information, point out any corrections that should be made in them to make them correct, can you?

A. I can show them to Mr. Bowles and ask him if he has them correct. I don't believe I have a copy to compare them with.

Q. The same statements appeared in the Spectator and in the various insurance magazines which were published at that time, did they not?

A. As I recall it, they appeared in several magazines. I don't know which ones.

Q. And you say that neither you nor Mr. Bowles is able to furnish me any better version of what he said than such a version as this; that is, something that is in a magazine or newspaper? Is that correct?

A. I was not able to locate any this morning.

Q. So that this is the best evidence that you can suggest to me of what he actually said, is it?

A. I know of no other place except in the magazines.

Mr. Christian: I will say I asked this witness about this statement in view of the fact that he seemed to be appearing here as the alter ego of the defendants. I will be glad to pursue the matter with Mr. Bowles if produced as a witness. [fol. 786] In the meantime, I call on the deputy to tell Mr. Bowles of what has been attributed to him and that if there is anything wrong in what has been attributed to him he should come here and be sworn as a witness and correct it.

Mr. Staples: I deny the right of counsel to call on anybody for any such purpose. The evidence he has offered and which has been incorporated into the record will have to stand on its own merits, in my opinion.

Mr. Christian: I will then ask the attorney, it being improper for me, perhaps, to communicate with his client, either to admit that the statements as put in the record were made by Mr. Bowles or to ask Mr. Bowles to step from his office, which is fifty yards away, to this room and give testimony on the subject, Will the attorney produce Mr. Bowles?

Mr. Staples: No, I will not.

Mr. Christian: I ask him to produce Mr. Bowles as witness to disclaim or affirm the correctness of these statements.

Mr. Staples: I have no doubt in the world that the statements are probably correct but I think the matter is so immaterial that I certainly am not going to call on Mr. Bowles to come over here to deny them.

[fol. 787] CHARLES C. CHAPPELL, JR., a witness called on behalf of the plaintiffs, and being first duly sworn, testified in rebuttal as follows:

Examined by Mr. Christian:

Q. Mr. Chappell, will you say what is your occupation?

A. Cashier, Branch office, Travelers Companies, Richmond, Virginia.

Mr. Christian: I exhibit to Mr. Staples, from the files of Mr. Chappell, a copy of a letter dated July 11, 1938, from Tabb, Brockenbrough & Ragland to Travelers Insurance Company, Mutual Building, Richmond, Virginia.

Q. I ask you to read into the record the copy of the letter.

A. "July 11, 1938.

"Travelers Insurance Company,
Mutual Building,
Richmond, Virginia.

"Re: Resident Agent's License.

"Gentlemen:

"In connection with the new law it is necessary for us to license the following employees by reason of the fact that they will sign policies for your Company.

"Kindly secure the necessary license for each of them.

Margaret O. Kettell	W. E. Turner
Mary Jane Cullinan	H. G. Coghill
Robert W. Cole	

[fol. 788] "Yours very truly,

"TABB, BROCKENBROUGH AND RAGLAND;
(Sgnd.) Stuart Ragland. SR/hc."

"(Same letter addressed to The Travelers Indemnity Company and The Travelers Fire Insurance Company. In

the letter to The Travelers Fire Ins. Co. the following were desired to be licensed.

Margaret O. Kettell	W. E. Turner
Mary Jane Cullinan	E. F. Foster
Robert W. Cole	H. G. Coghill.)"

By Mr. Christian:

Q. What is the number of the salaried personnel of the Richmond, Virginia, branch office?

A. 80.

By Mr. Staples:

Q. I believe you have four Field Assistants. What do they do, generally speaking?

A. They appoint agents and assist in the development of the agent's business for the company, soliciting would-be agents and cooperating in any other way possible.

Q. Do any of them solicit business on their own account?

A. No, sir.

Q. Do any of them receive any commissions on business written through your office?

[fol. 789] A. No, sir.

Q. Do any of them receive any commissions on any business solicited at all that you know of?

A. No, sir.

Q. Their primary function is dealing with the agents, is it not, and assisting them in their work?

A. That is true.

Q. This organization which you have just referred to covers all of the Travelers Companies, does it not, instead of just the casualty branch of the business?

A. It covers all of the Travelers Companies.

Q. How many companies are qualified in Virginia?

A. Four. Travelers Insurance Company, Travelers Indemnity Company, Travelers Fire Insurance Company and Charter Oak Fire Insurance Company.

JOHN A. GIBSON, a witness called on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Gibson, state your occupation?

A. State Manager of the Travelers Fire Insurance Company with headquarters in the Richmond, Virginia, Branch Office.

[fol. 790] Mr. Christian: In examining this gentleman as to certain fire contracts, I am limiting my questions to countersignature practices. I am offering the evidence as material with reference thereto and do not waive my contention that customs and obligations in the fire business, in respect of division of commissions, is immaterial upon the issue of the constitutionality of the statute, so far as its impact upon casualty and surety companies is concerned.

Q. Please say what number of fire contracts have been prepared in the branch office in Richmond since June 21, 1938, which have been countersigned by Tabb, Brockenbrough & Ragland?

A. Three.

Q. In how many of these cases has this agency criticized these contracts in any manner or suggested the making of any changes therein or made inquiries as to the propriety of the coverage afforded thereby?

A. None.

Q. On how many fire contracts between January 1, 1938, and June 21, 1938, did this agency receive a ten percent commission where the contracts were produced outside of Virginia and covered in the Richmond vicinity without the [fol. 791] agency countersigning the policies at all or even seeing the policies before they left Richmond in order to be put in process of delivery to the assured?

A. Seven.

Q. Were they the only cases where it received that commission from your company during that period on contracts produced outside of the State?

A. They were.

Q. I go back now to these contracts about which I first asked you since June 21, 1938, and which they countersigned. Are those three contracts the only ones, produced outside of Virginia since June 21, 1938, and issued by your

company, covering in the Richmond vicinity, upon which they have received commissions from your branch office since June 21, 1938?

A. From the company, yes.

Q. You do not mean by this to negative the possibility that unbeknown to you some Travelers agent somewhere else may have himself made a payment of a brokerage to this agency, do you?

A. No, I wouldn't know if he did that.

Q. You are just speaking of allowances by the company as distinguished from producers?

A. That is right.

Q. In these seven cases between January 1, 1938, and June 21, 1938, did this agency ever make a criticism or suggest any change in any of these seven policies?

A. No.

Q. Did they raise any questions as to the propriety of the [fol. 792] coverages?

A. No, sir.

Q. Did they in each case immediately, after you countersigned each policy in this office and sent it off, receive by [fol. 793] way of a daily report, a showing of its contents?

A. They did.

Q. That, I believe, is a copy of the typewritten part of the policy as distinguished from the form?

A. That is really what they call an agent's record, as far as the agency is concerned.

Q. And it does consist of a copy of the typewritten part of the policy?

A. That is right.

Cross-examination.

By Mr. Staples:

Q. As I understand it, your office does not have any record of transactions that occur between your local resident agents and non-resident agents and brokers where they communicate with one another direct? Is that true or not?

A. That is right.

Q. How did these seven contracts happen to go to them direct from your office instead of going through the producer of the business?

A. Those seven contracts were from January 1, 1938, to June 21, 1938. That was before the new law went into

effect. To facilitate matters and assist the agent, we wrote the policies up there and signed them. I had countersigning authority at that time and we just sent them a daily report [fol. 794] and in due course they would get the commission.

Q. Did they get all of the commission or just part of the commission?

A. They would get the appropriate commission.

Q. All of it?

A. Yes, all of the broker's commission.

Q. Who was the producer of that business? Who negotiated it?

A. They were outside brokers.

Q. Didn't they get any of it?

A. Yes, they got their producer's commission up there which would possibly be ten percent and then Tabb, Brockenbrough & Ragland got ten percent.

Q. In other words, they divided?

A. They divided it which is customary. Each of them got ten percent.

Q. But those brokers who happened to negotiate those seven contracts, instead of sending them direct to a Virginia resident agent, requested the company to associate some local agent with them in the transactions; is that the effect of it?

A. It was turned into our Brokers Department in Hartford and they, in turn, requested our office to have a contract issued.

Q. Did you say anything to Tabb, Brockenbrough & Ragland about having these contracts on hand before you countersigned them and sent them back?

A. No, sir.

[fol. 795] Q. What chance would they have to examine them before they were countersigned if they didn't know anything about it?

A. They had a copy of the contract we sent them. Every time we sent them a daily report or an agent's record rather.

Q. But that was after you had already countersigned it and sent it back, wasn't it?

A. That is a fact.

Q. What chance would they have to inspect the contract before you countersigned it if you countersigned it and sent it back before they knew anything about it?

A. They couldn't have had that opportunity but they had the opportunity afterwards.

Q. After the contracts had already gone into effect?

A. That is right. The contracts can be changed, you know.

Q. You only sent them a skeleton part of it?

A. Yes, but it is a copy of the contract. The form is on the agent's record and shows the rate of premium and everything else.

Q. And your company did not make the practice of inviting any assistance from the local agents or anything of that kind prior to this new law?

A. No, we didn't ask Tabb, Brockenbrough & Ragland about it.

[fol. 796] Q. So that if they had done anything about it they would have been more or less butting in on a custom established by the company, wouldn't they?

A. We would have been very glad indeed to have any suggestions. If they felt we could improve the contract, it would be to our advantage.

Q. Why didn't you ask them about it?

A. We couldn't ask them about every case.

Q. Did you ever invite them to make any comments on transactions of that kind or indicate that you would for them to do anything about it?

A. I did not.

Q. Did any officer of your company, so far as you know, ever do that?

A. No, sir.

Q. Why did your company give Tabb, Brockenbrough & Ragland half of the commissions on these seven cases?

A. The only way I could answer that is that it was customary to give the broker's commission on business which you are referring to.

Redirect examination.

By Mr. Christian:

Q. Was this a new custom that was instituted January 1, 1938, in cases like these seven of your attending to the whole transaction here and sending Tabb, Brockenbrough & Ragland the ten percent commission and a copy of the daily report.

A. We have been doing it over a period of years.

Q. Do you have any instructions from your home office with reference to doing it? I don't mean necessarily in-

[fol. 797] structions pertaining to this agency or these seven cases but do you have general regulations under which, in cases like these, you have to give the local agent a ten percent commission?

A. No, I haven't got any specific instructions. In fact, the checks don't come from the Richmond office. They come from the home office.

Q. So that they pay it in Hartford rather than you paying the ten percent here?

A. That is right.

Q. The daily report comes from you and the ten percent goes to them from Hartford?

A. Yes.

Q. Then every time they get the ten percent they are getting it on a policy they never have countersigned or never have seen except through the daily report?

A. That is right.

[fol. 798] Recross-examination.

By Mr. Staples:

Q. You say these seven contracts were sent down here for countersignature?

A. Yes, sir.

Q. Who were they countersigned by?

A. They were countersigned in my name.

Q. Then the resident agent didn't even countersign the contracts, did he?

A. Those seven cases he didn't.

Q. But you did send to that office a skeleton form of the coverage?

A. I did, sir.

Q. What was the purpose in doing that?

A. Because they would have a record of it.

Q. Why did you want them to have a record of it?

A. Because they were going to get the commission on it, the brokerage commission.

Q. Is that the only reason?

A. We don't do overhead writing.

Q. You are not doing overhead writing if it is negotiated by a non-resident broker, are you?

[fol. 799] A. If we have business come here from Hartford and we sign it and don't give any commission to an

agent in Richmond or this vicinity, it certainly would be overhead writing.

Q. You would call that overhead writing if it were in the fire business?

A. In the fire business we would.

Q. In other words, if your company wrote a fire policy which was negotiated through a non-resident broker or agent and you gave the non-resident broker or agent all of the commissions and didn't give any of it to the local agent, you would call that overhead writing, would you?

A. That is the term we use in the fire insurance business.

Q. I still don't understand why it was necessary for you to send to the resident agent's office in Richmond a copy of the coverage contained in a contract merely because you were paying him half of the commission. It seems to me it would be sufficient for that purpose to merely send him a check and say that a policy had been negotiated. Why should you send him a copy of the policy itself?

A. Well, we want him to have notice of the business as soon as possible. It would probably be sixty days before he would get his brokerage check.

Q. You could just write him a letter saying you were crediting him with so much money on a policy that was [fol. 800] written, couldn't you, without sending him a copy of the coverage?

A. I suppose we could have done that.

T. T. Moore, a witness previously called by the defendants, was recalled for further cross examination and testified as follows:

Examined by Mr. Christian:

Q. Mr. Moore, we were speaking about some interpretations of this Act when you were on the stand before which were, as I understand it, first published in the business when you gave your testimony on the stand and had not been published except to the extent that your testimony on the stand constitutes publication of them. Have you sent out any copies of that regulation about the subject-matter of subparagraph (b) of paragraph 16 of the answer since you were on the stand the other day?

A. No.

Q. Has the Department gotten out any regulations under this 1938 Act since it became effective which it did communicate to the business?

A. I don't believe we have, other than any regulations we have already mentioned.

Q. You have supplied me with a copy of a regulation dated August 20, 1938, which I will ask you to read to the Reporter so that he may record it as a part of your testimony.

[fol. 801] A. Commonwealth of Virginia, State Corporation Commission, Bureau of Insurance, Geo. A. Bowles, Commissioner of Insurance, Richmond

August 20, 1938

To the Company Addressed:

The question has arisen as to whether or not it is permissible under the provisions of Section 4222 of the Insurance Laws, as amended, for a properly licensed resident agent to delegate the privilege of countersignature to an office employee by power of attorney.

In our opinion a duly licensed resident agent may delegate to a full time employee of his office only, by power of attorney, the right to countersign such resident agent's name to policies or contracts of insurance or surety requiring such countersignature. We are further of the opinion that a resident agent may not delegate either to another resident agent or to a non-resident broker the authority to countersign a policy or contract of insurance or surety with his signature.

There is, of course, no objection to duly licensed agencies having full time employees of such agencies licensed as resident agents which would automatically carry with it the countersignature privilege.

Very truly yours, Geo. A. Bowles, Commissioner of Insurance.

[fol. 802] Q. Was this sent out concurrently with the date to all the companies affected by the 1938 Act doing business in Virginia?

A. It was. It was sent out to all fire and casualty companies.

Q. Mr. Staples asked me to have you also read a letter you sent to Mr. Cadmus, Manager, Workmen's Compensation Inspection Rating Bureau of Virginia under date of

November 12, 1937, and I ask you to read that to the reporter.

A. Commonwealth of Virginia

Bureau of Insurance

Richmond

November 12, 1937.

Mr. E. E. Cadmus, Manager,
Workmen's Compensation Inspection
Rating Bureau of Virginia,
323 Broad-Grace Arcade
Richmond, Virginia.

DEAR MR. CADMUS:

Replying to your letter of October 18th and supplementing our conversation regarding separate Virginia policies as referred to in certain rulings of this department, I wish to advise that this matter has been discussed with Judge Ozlin of the State Corporation Commission and his opinion is as follows:

A separate and distinct Virginia policy shall be issued to cover all Virginia risks under the Workmen's Compen- [fol. 803] sation Act. If, however, the companies desire to issue out-of-state policies to cover operations in several states, including Virginia, it is necessary that the Virginia coverage be written on a separate Virginia policy or a Virginia schedule or declaration which shall be separate and distinct from the schedule of operations in other states. All such policies, schedules, or declarations of insurance must be written in full compliance with the Resident Agency Laws of the State of Virginia.

As pertaining to the above ruling, a Virginia risk shall be defined as any risk having operations in this State of an extensive or a permanent or semi-permanent nature.

Very truly yours, Geo. A. Bowles, Superintendent of Insurance.

MOS:P.

Q. Under the present practice of the Convention of Insurance Commissioners has it been made a part of the standard practice in conducting examinations that the Examiners of the Insurance Department make the necessary

investigations to determine whether premium tax payments are being correctly allocated and made?

A. It is my understanding—I do not recall the wording of the resolution, but there was a resolution adopted by the National Association of Insurance Commissioners stat-
[fol. 804] ing that the question of taxes should be investigated on examination and that the usual procedure is to make a check of taxes.

Q. You testify that that is a part of the departmental examinations of casualty and surety companies when they are examined by the Insurance Department?

A. It is a part of the Virginia procedure and I assume it is the procedure in other states.

Q. You also know that it is quite the custom, when your department takes part in the examination, instead of making it alone, to do it in association with the departments of other states, do you not?

A. That is correct.

Q. And you know that in those associated examinations it is the custom to make this check, do you not?

A. It is the custom to make the check.

Q. Please state if it is not the practice of insurance companies to maintain a separate file in connection with each separate insurance contract and its various changes from the time it is issued to the time of its expiration?

A. Of course, companies follow different procedures. Ordinarily there is a separate Hollerith card punched, I believe, on each policy as it is written.

Q. And as changes are made in the policy there are changes in the punching of the card, are there not?

A. Sometimes I believe there are and sometimes they
[fol. 805] are corrected by additional cards. The effect would be the same.

Q. Those cards are made up from the data in the file on the policy, are they not?

A. Yes, sir.

Q. And the file on the policy contains the copy of the typewritten part of the policy and of the typewritten changes, does it not?

A. They are ordinarily made from the daily reports.

Q. In making these examinations of the companies, isn't it an entirely usual thing to run off a bunch of cards and see the premium allocation to the various states for tax purposes and then go back to the files and check the Hol-

lerith punching against the files to see whether the cards are correct?

A. Yes, I would say that is the usual procedure.

Q. Tell me, speaking generally, to what extent it is your observation that the companies seem to endeavor or seem not to endeavor and to what extent you think they succeed in any endeavor they may make in properly allocating premiums for tax purposes and making proper payments in the several states?

A. I would hesitate to answer a question of that kind. I think in the past probably some companies have been a great deal more careful than others in reporting premiums for taxation.

Q. When these examinations are made do you, among other things which you achieve by making them, discover and correct errors that have operated against your state?

A. A number of errors have been discovered.

[fol. 806] Q. Do you require their correction?

A. That is true.

Q. And that is the method by which the State of Virginia customarily safeguards its interest in respect of premium taxation, is it not, to discover errors in the course of these examinations and cause them to be corrected?

A. I do not feel that that is the only method of insuring the proper return to the State of Virginia.

[fol. 807] A. I would say that that is one of the methods used.

Q. Has the State of Virginia adopted any practice heretofore of going around to different resident commission agents' offices or branch offices of the companies, as distinguished from their Home Offices, and making checks in order to determine whether the state is getting its proper taxes?

A. It has not.

Q. Have you had in contemplation adopting any practice to go around to agents' offices or branch offices and conducting examinations of their records?

A. We have not contemplated doing it.

Redirect examination.

By Mr. Staples:

Q. Mr. Moore, you spoke of checking the records of these insurance companies. Do you have any other records than

the records of the company against which you can check their correctness?

A. We do not except on occasions, in connection with examinations, we are furnished with premium data showing premiums returned.

Q. Who furnishes you that?

A. The various other Insurance Departments from time to time.

Q. You mean of other states?

[fol. 808] A. In other states when examinations are being made. That is the same thing to which Mr. Christian referred.

Q. But the only source of information which you have under the present laws as to the total premiums written on Virginia coverage by any insurance company consists of that company's own records, does it not?

A. That is correct.

Q. If this 1938 Act is valid and enforced, is it not true that if the law is complied with resident agents of Virginia will have data and information passing through their respective offices which, as a whole, would show the entire amount of premiums written by all of these insurance companies, and each of them, on Virginia coverage?

A. Yes.

Q. Is it not true then that it would be practicable, under those circumstances, for the Insurance Department, by its regulations, if they have the power or, if not, that it be required by appropriate statute to require each of these resident agents to file a report annually with the Insurance Department showing the premiums of each company passing through these respective agents' offices and that the sum total of those reports would reflect the total amount of premiums written by each company in the state during the year covered by the aggregate of these agents' reports?

A. Yes, I think that would be possible and practicable.

[fol. 809] Recross examination.

By Mr. Christian:

Q. You have said that under this 1938 law a Virginia countersigner is required to keep records which would enable the state to check up on its proper receipt of premium

taxes due on the premiums on policies so countersigned by him. I ask you to read into this record, handing you a copy of the 1938 Act, the words of the Act which you think justify your making this statement under oath to the Court as you have done.

A. As I understood the original question, Mr. Staples simply asked me whether or not the various resident agents would have the information from the dailies passing through the office, and so forth, to enable them to make up such a report and I answered that they would, and I do not think that this has anything to do with the laws at all. It is simply a practical matter of whether they could, from the information passing through, compile it.

By Mr. Christian:

Q. What part of the law requires them to have daily reports or other information?

A. If they countersign, as Mr. Staples prefaced his question, his statement being that if the law were complied with, if they were countersigned, the information would certainly obviously pass through their offices.

[fol. 810] Q. Mr. Adair testified on two occasions he took contracts to the office of Davenport Insurance Corporation since this Act became effective and took them out of his pocket when he was talking to a member of that agency at the latter's desk and asked him to countersign the contract, which was immediately done, and the contract was taken away then and there by Mr. Adair for filing in some public office. If Mr. Adair has testified correctly to those transactions, how would Davenport have any record of the kind you speak of?

A. Of course, I don't know what records Davenport made. They may have records and they may not. They could have made them.

Q. Assuming they did not, according to the construction of this law about which you have testified, they haven't violated any Virginia insurance law, have they?

Mr. Staples: That question is objected to for the reason stated in the previous examination. This witness, I think, is not called upon and, in fact, I think it would be highly improper for him to undertake to prejudge in an official capacity and in an ex parte proceeding as a witness whether or not some insurance agent in the state has violated the

statute as that is a question which may come before him in his official capacity and I think he should reserve his decision certainly until the person charged with the violation has an opportunity to be heard.

[fol. 811] A. I decline to answer.

Q. Suppose, having had an intimation from me that Davenport had violated the law, if that is what you think is the effect of my words, and that they should be hauled up, would you have anything to do with judging their case or would that be reserved to Mr. Bowles and the members of the Corporation Commission?

Mr. Staples: This question is also objected to for the same reason as the witness has testified that he has charge of the enforcement of the statute and would certainly have to decide whether he would institute a complaint on the facts laid before him and whether or not, before instituting such a complaint, he would give the party against whom the complaint was made an opportunity to explain the situation if it was so desired, and I don't think this line of examination is at all proper and the witness is advised he does not need to answer the question.

A. I decline to answer on the advice of counsel.

By Mr. Christian:

Q. Leaving that point alone and talking about a sup-
[fol. 812] posititious case of Mr. John Doe, agent, am I to understand from your testimony this morning with reference to agents keeping records when they countersign, and your previous testimony of the constructions placed on this Act, that you assert under those constructions for good reason or bad, it would be a violation of the Act for a countersigning agent not to keep any records?

Mr. Staples: Same advice to the witness.

A. Same answer.

Q. May I ask whether there have been any regulations published to the business or any regulations promulgated in recent conferences between you and the Attorney General which have been kept private between you, or any other regulations saying explicitly whether or not a Virginia countersigner must keep any records?

A. I do not recall that any ruling issued mentioned the question of records.

CHARLES F. GALLAHER, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Gallaher, will you state your position?

A. My position is Assistant Cashier of the Richmond Branch Office of the Travelers.

Q. In your position with the Travelers, please say whether you have knowledge of who countersigns the [fol. 813] casualty contracts which are countersigned in its Richmond branch office?

A. I countersign those or one of my assistants having that authority.

Q. I notice that the Virginia rider, which is a part of Exhibit C, has a countersignature space on it and that the universal policy form itself has a countersignature space on it. Under your practice as now and hitherto followed, both before and since the enactment of this 1938 Act, are both the Virginia rider and the universal policy required to be countersigned?

A. They are.

Q. Is this standard form which I have spoken of as the universal form used nationally in the United States?

A. Yes.

Q. I notice this Virginia rider shows at the top that it is for attachment to the universal policy when applicable in the State of Virginia and down at the bottom it has the symbols "45 = 1788 Virginia". Do similar forms prepared for use in other States, where the state law requires the attachment of such riders to the universal policy, contain similar conspicuous identifying symbols?

A. They do.

Q. Under the regulations of your company would it be [fol. 814] proper or improper, when you are asked to countersign a workmen's compensation policy produced outside of Virginia and covering in Virginia, to sign it if it had a Nevada or California or Maryland rider instead of a Virginia rider attached to it?

A. It would be improper.

Q. Suppose it didn't have any state rider at all attached to it, would it be improper to countersign it or proper, if it covers in Virginia?

A. It would be improper.

Q. How many seconds or minutes or hours or days would it take you to determine whether one of these contracts had a Virginia rider on it or not?

A. I could tell at a glance.

Q. Supposing it had a rider of another state, do you think you would observe that?

A. I would for the reason that each rider contains the symbol number and the name of the state on it.

Q. And that symbol number and name of a state are in much larger type than the body of the rider and appear within half an inch of a place where you have to put your countersigning signature on the rider, don't they?

A. That is true.

Q. Having reference to automobile liability policies, how many forms does Travelers use nationally?

[fol. 815] A. There is a standard form used nationally with various state exceptions. The state exceptions that I recall are Massachusetts, Texas and Iowa.

Q. Are these forms sufficiently conspicuously marked and symboled to enable you to tell at a glance when one of these policies comes from out of the state to your branch office for you to countersign, whether it is the Massachusetts or Iowa or Texas form or whether it is the national form?

A. Yes, sir.

Q. In a general way could the Court get an idea of the opportunity offered you to detect an error in the form by looking at this defendants' Exhibit C? In other words, are there different symbols about as conspicuous as there are on Exhibit C?

A. Yes, sir.

Q. Under your practice and instructions, when such a contract comes here to Virginia for you to countersign, is it proper for you to countersign it if it is a Massachusetts or Iowa or Texas form or, under those circumstances, would there be propriety in your failing to countersign?

A. If I understand your question, we could not countersign one of those forms here with propriety.

Q. Please say whether or not at the present time and for more than two years last past, whenever the Richmond branch office, through yourself or someone else, countersigns a casualty contract, it retains a copy?

[fol. 816] A. We retain a copy.

Q. Please say whether it is true or not that in these cases you also file a copy with the Workmen's Compensation In-

spection Rating Bureau of Virginia if the contract is a workmen's compensation contract and with the Virginia Auto Rating Bureau if the contract is of automobile liability?

A. We are only required to file a copy on workmen's compensation.

Q. Having reference to automobile policies, is there any filing in Virginia of a copy of such a policy when produced outside of the state but countersigned in the Richmond branch office?

A. The Home Office files a copy and not the Richmond branch office.

Q. Within how short a time do they customarily file it? I mean as a matter of days, weeks, months or years?

A. A matter of days.

Q. We have talked about workmen's compensation forms and automobile forms. What does the symbol FA on your company's form stand for?

A. That stands for a policy written in the Indemnity Company, affording public liability and property damage insurance.

Q. What does the symbol MC stand for?

A. MC stands for a policy written in the Travelers Indemnity and Travelers Fire Insurance Company in which [fol. 817] we afford combination coverage, consisting of public liability, property damage and comprehensive coverages.

Q. What does MV mean?

A. MV is similar to the MC and that is written in the Indemnity Company and the Fire Company, affording combination of coverage involving public liability, property damage and comprehensive. You want me to explain what I mean by "comprehensive"?

Q. You spoke of comprehensive as designated by the symbol MC and I think you also used the word "comprehensive" in connection with MV. I want you to explain that.

A. MV is public liability, property damage, and specific peril coverage.

Q. In the other lines of casualty insurance business are the forms designated similarly by symbols appearing conspicuously?

A. All policies, with the exception of the boiler and machinery policies, no symbol, if I remember correctly, appearing on that contract.

Q. That is a copyrighted deWindt form that all the companies use nationally, is it not?

A. That is true.

Q. Which has been introduced as Defendants' Exhibit D?

A. That is correct.

[fol. 818] Q. Would it be fair to say that in the cases of these various other forms it is easily practicable to tell at a glance whether the correct form is used, as you have indicated you thought it to be, in connection with the workmen's compensation form?

A. Yes.

Q. Please say whether, when there is need for a policy change requiring countersignature, and the Richmond branch office furnishes the signature, copies are provided, retained and disposed of as you have said was true as to original policies?

A. They are.

Q. Can you say whether the Workmen's Compensation Bureau, as a matter of fact, does have a survey department which verifies the correctness or incorrectness of classifications?

A. They do have.

Q. Do you see that person in that department and talk to him or is that just an idea of yours that they do that?

A. I know they do because we from time to time see criticisms on our policies, which criticisms are based on these surveys made by an engineer of the Bureau.

Q. And they tell you when they make the criticism that their engineer has gone and inspected the risk and found the classifications are wrong or else raised a doubt as to the correctness of the classifications which they want you to explain; is that right?

[fol. 819] A. That is right.

Q. Under whose supervision are the casualty contracts which are prepared and issued at the Richmond branch office of the Travelers so prepared and issued?

A. Under my supervision on casualty insurance.

Q. Are you sufficiently acquainted with the processes of the preparation and issuance of similar contracts by agents or agencies, licensed as Virginia resident agents or agencies, to be able to say whether they follow or do not follow the

same methods in respect of the preparation and issuance of these contracts as are followed by you?

A. I can only speak for those agents writing policies for the Travelers, which agents report through this office. I am in a position to say that they have to follow the same procedure that we follow if the policy were issued in our office.

Q. Why is that?

A. All policies must be prepared on the same form and in the same manner that we are required to prepare them.

Q. Are they supplied with the same order forms for the producer to turn over to the policy writer that the office agents of your branch here are supplied with?

A. They are supplied with those forms.

Q. Will you please describe how, if I sold somebody a contract and I am one of your office agents, under my [fol. 820] supposition, and I want to get the policy issued, how I go about it?

A. From the standpoint of the branch office, the agent is required to file a completed application, signed by the agent, from which application we prepare the policy.

Q. When the producer signs one of those forms, what does he do with it?

A. He either mails it to the Richmond branch office or hands it across the counter, if he is in the branch office.

Q. And who is the first man it comes to after it gets into the Richmond branch office across the counter or by mail?

A. I turn it over to one of my assistants for rating and checking.

Q. Does it sometimes happen that the producer, instead of using the appropriate form, will just go to the counter and undertake to state verbally what he wants?

A. That has happened. When a branch office agent turns in an order in that way we require him to complete an application because we are right there on the spot and turn the proper form over to him for completion, but when an order comes in, say, a letter from an out-of-town producer, he may or may not have all the necessary information. In that case we either send an application to be completed or ask specific questions to complete an application in our office.

[fol. 821] Q. And then you add the information originally given you to the additional information received as a result of your inquiry and make up a form like that in this office?

A. We do.

Q. If the order comes in not on the proper form but by letter, does your assistant underwriter write that letter requesting the additional information if additional information is needed, or do you do that?

A. It all depends on the type of policy and the fact that the assistant may or may not know enough about the business to write an appropriate letter.

Q. If he feels sure that he can write an appropriate letter, he will do it or, if not, he will take it up with you?

A. That is right.

Q. Who prepares those forms in a case where the form has not been used? Does the assistant underwriter handling the case prepare that?

A. He prepares it, yes, sir.

Q. After the order has been checked and necessarily corrected or supplemented to make it complete, does it then contain adequate data to enable somebody, by the use of that form, to know how to write the policy?

A. If the application is completed in its entirety, the policy writer can prepare a policy from that information.

[fol. 822] Q. Before this form goes to the policy writer does anybody fill in that branch office approval blank?

A. Before the application is turned over to the policy writer my initials must be put in the branch office approval space and I put it in myself.

Q. And there would already have been noted in the endorsement space a notation of any endorsements that go on the policy when it gets to the policy writer; is that correct?

A. That is correct.

Q. Supposing that you don't want to write that contract that is ordered by me as a producer, what do you do?

A. Write a letter to the producer declining it.

Q. Does that sometimes occur?

A. Yes, sir.

Q. Do you ever offer him alternative policies or a somewhat different form or at somewhat higher than ordinary cost?

A. We do.

Q. Do you ever take the liberty to suggest that what he proposes in his order is not the most efficient or economical thing to the assured and that he consider some change in what he has ordered, or are they usually orders of appropriate coverages?

A. It would be pretty hard to answer for the simple reason that those agents who have a detailed knowledge of the [fol. 823] business will take orders on the appropriate basis. Other agents, not being familiar with the insurance business, may sell an order that isn't as good as might be had. What I mean to say is that all agents can't be classed the same as far as their knowledge of the business is concerned.

Q. Do you leave it to them as the producer or do you undertake to suggest a change?

A. If we find an order comes in and we can better the coverage, we suggest the alternative at the time we issue the policy.

Q. Do you ever write back when one of these agents orders a policy for a man named Bill Smith and ask him to make an affidavit that that is the correct name of that man or do you ever ask him for Bill Smith's address so you can write Bill Smith and ask him if Bill is really his name?

A. No, we never have occasion to do that. The only exception that might be considered an exception would be on automobile insurance. We make an outside investigation through an outside reporting company and if that company cannot identify this particular policyholder we write to the producer for further means of identification, the business address or confirmation of his residence address.

Q. When this order form with your O. K. on it goes to the policy writer, what does the policy writer do?

[fol. 824] A. He takes the form and stubs the blank policy. By that I mean we have blank policies which have stubs and certain information is inserted on the stub to indicate that that particular policy has been used. He takes the policy and multiple copies of the proposals or dailies and issues the policy from the information contained in the application.

Q. And the stub is retained for the same purpose as I would retain a check stub perhaps?

A. That is right.

Q. What does a policy writer ordinarily receive by way of compensation?

A. We have two policy writers and we pay them $80 each per month.

Q. Do they have at hand, where they can select appropriate forms from among the whole group of forms, stocks of all the forms which they need in writing the policy?

A. We have a complete supply of all forms.

Q. Do those policy writers make the selection of the form to be used?

A. They select the form to be used from this supply, which form is indicated on the application. The man handling the application will insert the policy form in the lefthand corner so they will know which form to use.

Q. How many policies will one of these policy writers write a day on the average, working full time, seven hours?

A. I would say twenty.

[fol. 825] Q. What does a person, who falls into the classification of one of these assistant underwriters, ordinarily receive in the way of salary?

A. Our starting salary is $150 a month.

Q. Among the people working under you, do some of them get substantially more than $150?

A. Yes.

Q. They get up to what?

A. It depends on the length of time with the company and his ability. We have no limit.

Q. What is the highest priced assistant underwriter under you? What is he paid?

A. $2400 a year.

Q. So yours, it would be fair to say, receive a compensation of $150 to $200 a month?

A. That is in this office.

Q. How many of these orders from producers can one of these men be reasonably expected to handle in a day?

A. That is a question that can't be answered from my knowledge. One application may take him all day.

Q. I am talking about the average day?

A. Anything I would say would be a matter of conjecture. He should be able to handle sixty a day.

Q. How many of those people do you have in your office under you?

A. Four beside myself.

[fol. 826] Q. And you are called in in difficult cases to assist them sometimes, aren't you?

A. That is true.

Q. But, as I understand, nowhere near the full time of yourself is employed in assisting those four, is it? Don't you have other duties than to assist them?

A. Yes.

Q. How much of your time is taken up assisting them—a great part or small part?

A. A great part because I have two men in training.

Q. What happens to a policy after the policy writer writes it?

A. It is checked by a checker.

Q. And who is the checker—you or one of your assistants or somebody else?

A. We have a girl checking policies at the present time and one of the men may check a policy occasionally.

Q. But this girl's principal occupation is checking policies, is it?

A. Among other things, yes.

Q. In an agency office or agent's office is it customary for that agent himself to deal directly with the policy writer or is there somebody between them such as you are between the producer and the policy writer in your office?

[fol. 827] A. The few agents I have visited usually have one or two girls in the office and the contact is between the agent and the girl who would ordinarily issue policies if they were called upon to do so.

Q. I suppose, however, in an important establishment like Tabb, Broekenbrough & Ragland they might have some supervising girl or some person coming between the producer and the actual writer of the policy, might they not?

A. Yes.

Q. Having reference to these Travelers agents which you said were the only ones whose practices you knew about, do they have young ladies in their offices to write these policies who are compensated about as yours are or would you say that their young ladies on the average are compensated at greater or lesser rate than yours are?

A. I would say on the average they would pay about the same salaries we would pay.

Q. How many cases out of one hundred policies, ordered to be written by your producers, written as you have described, and checked as you have described and returned to the producer in accordance with his order, does your producer have occasion to ask you to make the revision or correction of the policy because of errors therein which he claims have been caused by mistakes in your office?

A. Those occasions would be few. I would say one per-cent.

[fol. 828] Q. In those cases do you make a check to find out whether his blaming the thing on you was justified or whether, even though he blames it on you, the trouble came from some defect in the order?

A. Yes, sir.

Q. Do you usually find that where he claims it is your mistake, in fact it is your mistake or do you usually find the contrary?

A. We sometimes find it is our mistake. We more often find that the agent didn't supply sufficient information.

Cross-examination.

By Mr. Staples:

Q. Are your duties, Mr. Gallaher, confined principally to the office or do you go outside of the office in the discharge of your duties, such as traveling over the state?

A. My duties are principally confined to the office and do not require traveling over the state.

Q. The office of the Travelers, as I understand it, in Virginia, has established the practice of writing most of the policies procured by its agents in the state, hasn't it?

A. That is the practice.

Q. Do you know anything about the practice of companies that don't have branch offices in Virginia?

A. Only in a limited way because of my confinement to the branch.

Q. Most of the resident agents have authority to issue policies themselves, don't they, with most companies?

[fol. 829] A. We give authority on automobile policies. I don't know. I can't speak for the other companies.

Q. So that what you have testified to is simply confined to the Travelers Company and you don't undertake to testify as to any general custom or practice in the state along that line at all, do you?

A. I do not.

Q. Do you examine all the policies to see that they are done correctly?

A. We have a policy checker for that who is qualified to do that work.

Q. How much does the policy checker get?

A. She makes $100 a month.

Q. What is the custom of your office with reference to casualty insurance policies which have to be countersigned by local resident agents?

A. Policies are sent to us for countersignature purposes but they are done by salaried employees and we maintain a copy of each policy and forward the original to the agent or branch office that has the controlling interest in the policy. [fol. 830] Q. Questions which arise in relation to classification of risks, about which you testified that criticisms had been received from one of the Bureaus of the State, are handled in what manner in this branch office and by what section of the division personnel?

A. All criticisms emanating from the Bureau are referred to me personally. We check our records to determine whether the Bureau is right or we are correct. If there is any difference of opinion we try to iron it out with the Bureau (I am speaking of compensation now) by having our engineer check up on the point at issue if it is an engineering problem, such as classification of the risk, or have our auditing department check up on it because it may be a question of the pay roll and division of the pay roll. In this manner we arrive at some conclusion as to which is correct and which is not correct.

Q. What kind of cases were they that the Bureau complained of?

A. Compensation cases that were on our books that we have issued and they had gone out and made surveys and found that we have misclassified it.

A. We inspect some risks before we issue the policies and the majority of them we issue the policies before we inspect them.

Q. Which are the ones you inspect—those involving pretty large risks?

A. Hazardous classifications such as quarries and sawmill risks. We inspect those before we approve the policies. [fol. 831] Q. Why do you inspect these risks instead of relying on the producing agent if the producing agent is on the ground and able to examine the risk and analyze it?

A. We feel that producer isn't qualified as an engineer to determine the physical hazards surrounding any risks of that type.

Q. Suppose the producer is a New York broker, do you inspect that risk before you write it?

A. I do not have jurisdiction over the risks written by a New York broker and, therefore, I do not know what procedure they follow in that office.

Q. They don't come through your office at all?

A. We don't receive the inspection requests or issue such requests from this office on any business written outside of the state.

Q. You don't prepare those policies in your office, do you?

A. We do not.

Q. And when you countersign them, as you say, it has been your custom not to bother yourself about the risk at all as to whether it is proper underwriting or whether the policy is properly prepared or anything of that kind but you trust that to the Home Office; is that correct?

A. The only thing that we are concerned about is countersigning of policy and to see that the State endorsement is attached to that policy if it is compensation and if any [fol. 832] blank endorsements are attached showing countersignature space we have to insert the countersignature in those spaces.

Q. What examination do you make to determine the correctness of the coverage or anything of that kind?

A. We make no examination.

Q. You state then when you do countersign these policies the only examination you make is to determine whether it is a Virginia form and, if it is a Virginia form, you countersign in the places where it is provided that such a countersignature should appear; is that correct?

A. That is correct.

Redirect examination.

By Mr. Christian:

Q. You have described the procedure in the Richmond branch office by which producing agents, whether office agents or other resident commission agents around the state order the writing of policies and the method by which they are written and checked and delivered to the producer in response to his order. Can you say whether the procedure in this office in these respects is or is not regulated by a general manual of regulations and instructions which govern the similar activities of similar departments to yours in the various other branch offices of the United States?

A. I can only speak for those offices I have been in and in all of those offices we follow practically the same pro-
[fol. 833] cedure in handling casualty business.

Q. And if I am a policy writer or assistant underwriter or underwriter or cashier in the Richmond branch office, is it your view, with your knowledge of your company's operations, that if they want to transfer me to the New York branch office or the Washington office and give me the same job there that I could hang up my coat and go to work without having to find out what my duties were?

A. That is true, if you were transferred in the same capacity.

Q. Then the various jobs are under the same classifications throughout the branch office system of the Travelers throughout the country, aren't they?

A. According to my knowledge, they are.

Q. You are qualifying your answer as to offices you have been in and as far as your knowledge goes. I am trying to get at whether or not they don't have regulations of all of those matters that are printed and distributed and, from time to time, amended and supplemented that go coutnry-wide through these offices of which yours is just one? Isn't is all uniform?

A. As a general thing, yes.

Q. To be perfectly specific about where this business is produced which you write in the Richmond branch office, am I right that the business which you write in the Rich-
[fol. 834] mond branch office is business produced in Virginia?

A. That is business produced in Virginia.

Q. And it is not any business produced outside of Virginia, what you are writing?

A. You mean that we write in the branch office?

Q. Yes.

A. That is right.

William H. Osborn, one of the plaintiffs, being first duly sworn, testified in rebuttal as follows:

Examined by Mr. Christian:

Q. Mr. Osborn, are you familiar as the Richmond Branch Manager of the Aetna Casualty & Surety Company, with

the organization and personnel and the objects, and methods of carrying out those objects, of the Engineering Department and of the Claim Department of your company as maintained in the State of Virginia?

A. Yes, sir, I am.

Q. What would you say was the fact that the organization and personnel and objects and methods of carrying out those objects of the Engineering and Claim Departments of the Aetna as maintained in Virginia and of the Travelers Insurance Company as maintained in Virginia and of other leading companies as maintained in Virginia being generally similar or generally dissimilar? In those respects where you think they are dissimilar, if there are [fol. 835] any, I would like you to state the points of dissimilarity?

A. Well, I would say that the Inspection, Engineering and Claim Departments of the various companies are pretty much on a par. Of course, the number of the personnel varies in accordance with the line of business that the respective companies are doing in the territory. For example, some companies might locate their Inspector in another State. However, he is available to handle the risks in his territory and is merely located in another territory because that particular company doesn't have sufficient risks to warrant the maintenance of a full-time man in the territory. Aside from that, I don't believe that there is a great deal of difference in the Inspection and Engineering Departments.

Q. What about the Claim Departments?

A. I would say that the same thing is true all along with the Claim Departments.

Q. What would you say on this point where a man maintains his office in Baltimore or Washington or Charlotte in conducting the Claim Department work of the company or Inspection or Engineering Department work of the company in Virginia? Is he usually a man who, in addition to having jurisdiction in Virginia, has it in Maryland or the District of Columbia or North Carolina or is he just some part-time employee who does part-time claim work or part-time engineering and inspection work and the rest of his [fol. 836] time is selling insurance or practicing law or doing something of that sort?

A. No, the Inspectors, Engineers, and Claim men are always full-time salaried company employees, just as we are. It is simply that their risks are spread over a wider territory that might cause their not being located in Richmond, Virginia.

Q. As far as the six or eight companies that you would call the leading casualty companies are concerned, do they all have engineering and claim personnel in Richmond?

A. Yes.

Q. How many people are there in your engineering or inspection departments with headquarters in Richmond or elsewhere in Virginia?

A. One. I would like to qualify that. We have one man located here and he receives assistance when his work piles up from a special man from the Home Office. In other words, we don't have quite enough work for two men to be located here.

Q. Do you have any men located elsewhere in Virginia?

A. No.

Q. Do you have any in the District of Columbia?

A. Yes.

Q. How many claim people do you have located in Virginia and where are they located?

A. Our head Claim Office is in Richmond with the head adjuster and three adjusters under him. We have another Claim Office in Norfolk with one man there. We have a [fol. 837] third Claim Office in Roanoke with two men there.

Q. Have you made a special investigation recently to ascertain whether the Employers Liability Assurance Corporation has any salaried claim people with headquarters in Virginia?

A. Yes, I did.

Q. Have you made any investigation recently to see whether they have any salaried engineering people with headquarters in Virginia?

A. I did.

Q. Did your investigation consist of asking the Employers Liability local authorities what were the facts?

A. I called Mr. Farnville who is the salaried field representative of the Employers and asked him the number of claim salaried men they had in this territory. He advised me that they had two salaried men located in Richmond, [fol. 838] one in Norfolk, and one in Lynchburg. He stated

further that they had a salaried engineer and inspector located in Richmond; furthermore, that they have two engineers in North Carolina and one of these serves a part of Virginia territory.

Q. I make the same inquiry as to the New Amsterdam Casualty Company and whether it maintains any salaried engineering personnel or claim personnel, or both, in Richmond?

A. In this case I called either Mr. Boswell or Mr. Curtis, the New Amsterdam agents, and they advised me that they had two salaried men in Richmond, also an engineer in Richmond.

Q. How many Aetna agents are there in Virginia working on a commission basis?

A. In the neighborhood of 120.

Q. How many in Richmond?

A. Between 12 and 15.

Q. How many salaried agents are there in Virginia?

A. I will say a half dozen all together.

Q. How many of your commission agents in Virginia write contracts for casualty insurance in their own offices instead of being required to send them into the Branch Office to be written, in percentage?

A. Possibly ten percent.

Q. Will you please describe the procedure by which, when producing agents in Virginia produce contracts of casualty and surety covering in Virginia which are to be written in [fol. 839] your Branch Office, the contracts come to be written and how they are written and checked, and so forth?

A. Well, in the case of agents not located in Virginia they mail the orders for business to us.

Q. Do you mean to say not located in Virginia?

A. Not located in Richmond. Where the agent is located out of Richmond the usual procedure is for him to mail the order to us and it is generally on an application form which we have provided him with.

Q. When the agent is located in Richmond how does the matter work?

A. In the case of the Richmond agent he usually hands his order for the coverage to one of our Underwriters, and the Underwriter takes the application, checks it as to rate, makes certain that all the necessary information is set forth on it and then the application is placed in the hands of a

policywriter who writes up the policy. After the policy has been written it goes to what we call the head policywriter or checker and she checks it as to correctness and it then goes to the Cashier or Billing Department where it is properly billed and sent to the agent who originated it.

Q. Under the present operation of your company, is it countersigned before you send it to the producer or do you return it uncountersigned for him to countersign?

[fol. 840] A. We return it to the producer for his countersignature.

Q. What is your estimate of a day's task for one of those policywriters?

A. An average number of policies written by a policywriter in our office is 5,514 in a year. That is in the neighborhood of 20 a day.

Q. How many applications or orders for policies does one of these Underwriters handle in a day, on the average?

A. By that you mean if they did nothing else?

A. An Underwriter can pass on 75 or 100 risks in a day's time.

Q. What do you pay these Underwriters on the average?

A. We start them at approximately $100 a month and they range from there up to $3800.

Q. What do you pay the policywriters?

A. We start them at $65 a month. I would say $75 is an average salary.

Q. In your business do you have to go about into the offices of various agents working on a commission basis and licensed as resident agents in Virginia?

A. Yes.

Q. Are they in many cases agents of other companies than your own?

A. Yes.

Q. Do you ever go into Davenport Insurance Corporation's office?

[fol. 841] A. Yes.

Q. Do you ever go in Tabb, Brockenbrough & Ragland's office?

A. Yes.

Q. Do you ever go in Lunsford' office in Roanoke or Yancey's office in Harrisonburg?

A. I have never been in either of those offices.

Q. Do you go in any offices in Roanoke or Harrisonburg?

A. Yes.

Q. Which ones?

A. The only agency office in Harrisonburg is our own which is Sam Perkins and in Roanoke our two agencies there, McClannahan & Company and Preston Brumfield.

Q. In those offices do they use these order forms of which we have been talking, or application forms?

A. Yes.

Q. Do they have girls that write policies from the order forms?

A. Those are Aetna agents who send their policies to us to be written. They have girls that write fire policies in their office.

Q. Do you know whether the girls write casualty policies of other companies than your own which these agents represent?

A. Those agents only represent us.

Q. That is not so of Davenport?

[fol. 842] A. No.

Q. Does Davenport have a girl to write policies for other casualty companies?

A. Yes.

Q. Are you, in a general way, able to say whether, between the licensed resident agents in those offices and the girl, there are people not licensed as agents who are Underwriters or is the contact in those places directly between the licensed agent and the policywriters?

A. I would say that the contact is between the licensed agent and the policywriters.

Q. With that exception would you say that the mechanics of policywriting in those agencies is like it is in your branch office, or would you say that there are other differences between policywriting in those offices and your office?

A. With that exception I will say that the procedure is approximately the same.

Q. Is it a usual thing or a thing you would consider quite unusual for one of your producers to send back a policy to your office because of an alleged error on the part of your office in the writing of the policy and ask you to change it?

A. Well, of course, it has happened but it is an unusual thing.

[fol. 843] Q. Please state what is the average premium on contracts written in your office, classifying the contracts as far as you are able?

A. The average premium on casualty written in our office, which includes accident and health but does not include fidelity, surety and forgery, is $43.15. I arrived at this figure by taking the total number of policies written and dividing it into the total premium volume for the year 1938.

Q. Have you a similar figure on the fidelity, surety, and forgery business?

A. Yes, on fidelity our average premium is $83.25, on surety it is $51.37.

Q. Please state the average life of each contract written in your office, counting each renewal as a new contract?

A. The average life, as we figured it, is eleven months and twenty-four days.

Q. What classes of insurance do those contracts include?

A. They include the casualty lines that we write in our office, including accident and health.

Q. What is the difference between accident and health and other casualty lines with respect to the terms of the contracts?

A. As a rule casualty, other than accident and health, is written on an annual basis or a three-year basis. On accident and health an agent has the privilege of writing it on a quarterly basis, semi-annual basis or annual basis. [fol. 844] Q. Would the average Virginia resident agent, in your opinion as an expert, produce contracts about in conformity, as to the average premium, with those written in your office?

A. Yes.

Q. If he wrote accident and health insurance would his casualty contracts have a term in general conformity, in your opinion, with those written in your office?

A. Yes.

Q. Is any effort made by you, when you take on a new Virginia resident commission agent, or are engaged in assisting an old one, to get him to employ his time intelligently?

A. Yes.

Q. Is that generally true of casualty field men like yourself?

A. Yes.

Q. What does such a man usually specify to an agent as being an intelligent spending of the agent's time?

A. To devote his time to the production of casualty and surety lines and make contacts for new business.

Q. What does such a man specify as to the necessity for servicing business then on the agent's books or subsequently acquired by the agent? Does he tell him it is necessary to service it or not necessary to service it?

A. We, of course, tell him that it is necessary for him to service the risk that he sells and acquaint him with the [fol. 845] facilities that we have for that purpose.

Q. Do you inform him as to how he should proceed in order to secure the use of those means?

A. Yes.

Q. What are those means generally?

A. Well, we instruct the agent that in case the assured has a claim to have the assured complete a loss report and if he can't do it himself to assist him in completing that report and then transcribe that to the Claim Department of our company for proper disposition. In the case of risks that involve inspection and engineering service, we acquaint the agent with the fact that we have an inspection and engineering department and instruct him in general as to the procedure they follow in the inspection of risks. The same is true of the payroll auditors.

Q. What percentage of the time of the average Virginia resident commission agent would you estimate he would spend either in rendering some service himself on his existing contracts or in securing the rendition of that service from the service departments of the company.

A. Well, there are many types of contracts which an agent spends very little, if any, time in servicing. On the other hand, there are others that do require time on the agent's part. I will say that on the average an agent would spend ten per cent of his time in servicing his policyholders. [fol. 846] Q. Does that include the time spent in procuring services to them of the company's service departments?

A. Yes.

Q. I want to know how many office agents you have in your office working on a commission basis?

A. Ten.

Q. Are all of these men licensed as resident agents?

A. Yes, sir.

Q. How often do you talk to those men?

A. You mean as a group or as individuals?

A. In any way.

A. I see them every day.

Q. Is it part of your duty to confer with them and assist them in all of their efforts as agents?

A. Oh, yes.

Q. Do you have opportunities in those contacts of forming a conclusion and receive knowledge as to how much of their time is spent in servicing activity and how much time is spent in other activities?

A. Yes.

Q. Is your answer based on that information among other information?

A. Well, it is based on that as well as my opportunity to be associated with agents throughout the whole territory under our supervision.

Q. Is it a part of the duty of a casualty field man to secure new agents for his company?

[fol. 847]. A. Yes.

Q. In doing so is he supposed to try to procure as agents for his company persons presently acting as agents for other casualty companies or is he prohibited from soliciting persons who are acting as agents for other companies to become his agent?

A. No, we are very active in soliciting agents of other companies.

Q. Do you make such efforts?

A. Yes.

Q. Please say whether, in the course of your efforts to procure agents to terminate their contracts with other companies and make agency contracts with your company, it often happens that they object on the ground that they do not want to give up the service facilities of the company that they are presently representing?

A. Yes, that happens.

Q. Do you ever have these people express an unwillingness to give up the claim and engineering service of the company they are then representing?

A. Yes.

Q. Do you find you are always able to convince such prospective agents that the claim and engineering services of your company are better than the claims and engineering services of the company they presently represent?

A. Unfortunately, no.

[fol. 848] Q. In such cases do you tell these prospects the nature of the services that your departments render?

A. Yes.

Q. Do they ever undertake to compare the services of similar departments of their company with the services you represent are made available by the departments of your company?

A. Yes, they will usually say that they consider that possibly ours is as good as what they are receiving but they are acquainted with the personnel of their present company and that is a stock reason for not making the change.

Q. How many separate contracts on the average would you say would result from 100 solicitations by a commission agent of persons not then his customers to place with him casualty or surety contracts.

A. I would say between 8 and 10.

Q. Suppose an agent is soliciting new contracts from prospects who are people who have already placed one or more contracts with him which are in effect, how many new contracts ought he to get out of a hundred solicitations of people of that type?

A. Well, we drive home to our agents that the best prospects for additional lines are existing policyholders and I would say, including present policyholders, the average sales per hundred would be greater, estimated at fifteen.

[fol. 849] Q. If an agent gets 100 contracts on his books with an average life of one year, or thereabouts, as you have stated it to be, including the accident and health contracts, what is the average expectancy of the length of time he would keep such items of business in his agency by means of the original contracts and the renewals thereof?

A. Four years.

Q. Then, if I put 100 policies on my books today you would expect half of them to be gone at the end of four years and all of them to be gone at the end of eight years; is that correct?

A. That is right.

Q. How much of the gross income of an agency is ordinarily expended in the payment of expenses of all kinds and how much is left to represent the net income of the agent or agents who own the agency?

Q. If this varies with different size agencies, then, of course, you are permitted to say so.

A. I would say the large city agents would spend approximately 45 percent of their commission income for overhead, whereas the agencies in smaller communities where rent and clerical salaries are smaller, would not have

overhead as large. I would estimate in that case approximately 35 percent.

Q. Do you know of a magazine called "Rough Notes"?

[fol. 850] A. Yes.

Q. Who are the main body of subscribers to that magazine?

A. Insurance agents and salaried company representatives.

Q. It is a monthly magazine?

A. I believe it is. I don't subscribe to it.

Q. Is it a magazine of high standing in the business or low standing?

A. It is of very high standing.

Q. Is it a very old magazine or a new one?

A. I don't know the age. I have been in the business about sixteen years and, as far as I can remember, I have always heard of "Rough Notes".

Q. Where have you been engaged as a casualty field man besides in Virginia?

A. I started out in Philadelphia. From there I went to St. Louis, St. Louis to Des Moines, Iowa, from there to Chicago, from Chicago to Wheeling, West Virginia, and Wheeling to Richmond.

Q. With reference to this testimony you have been giving today about what field men tell agents, how policies are written, engineering and claim services, how an agent must proceed to avail himself of them, the difficulties you encounter in trying to get agents of other companies to become agents of your company, contracts resulting from solicitations, life of a contract by original issuance and renewal, gross income of an agency as compared to net income, has what you have said with reference to your local business here in Virginia and local conditions in Virginia [fol. 851] been generally true as to all of these other States where you have worked as a field man?

A. I would say in general that conditions in Virginia are similar to those which I have found in the other territories in which I have been engaged.

Q. About what average rate of commission will a resident commission agent of Virginia ordinarily receive on his fire, casualty, fidelity and surety business?

A. I would say the commission to the city agent would be around 20 percent and to the agents in smaller communities around 18 percent.

Cross examination.

By Mr. Staples:

Q. Are you in charge of the Engineering Department of your Branch Office in Richmond?

A. Mr. Staples, I have supervision over the entire Branch Office and the engineers are located in our Branch Office.

Q. Are you at all familiar with the work done by the Engineering Department?

A. Yes.

Q. Is it your same company that writes these fire policies or is it an affiliated company?

A. It is an affiliated company. Their names are The Automobile Insurance Company and The Standard Fire Insurance Company, two companies.

Q. You spoke of the work done by the Underwriters in your office. What does an Underwriter do from the time [fol. 852] the application comes in for consideration? What is the work that he does about it?

A. Well, he takes the application and makes certain that every question is properly answered, that it is legible, so [fol. 853] that when it gets back to the girl, the policy-writer, she will understand it and be able to copy it into the policy which she types up. He checks the rate to see that the premium inserted in the application is correct. In our office he sees, if there is a file on this particular risk for this particular assured, whether we have other coverage in force and whether that other coverage has any bearing on this particular risk. I believe that is, in the main, the work of an Underwriter.

Q. This underwriting is practically clerical work, isn't it? There is no judgment or discretion necessary in a thing of that kind, is there?

A. Oh, yes, the Underwriter must exercise what we call underwriting judgment as to whether the risk is acceptable to our company. He makes the decision as to whether we will assume the liability of the risk or will turn it down.

Q. What is there on one of those application blanks that would present to an Underwriter any facts from which he could be able to exercise any discretion or judgment? What facts are there that come before him which would bring into play any discretion?

A. Well, for one thing, the use of the equipment. Another thing is the age of the piece of equipment. I don't

see it on this form but our form asks whether the risk has been declined by any other company. It asks whether the assured or the driver, if it is an automobile risk, is physi- [fol. 854] cally impaired, and often the location of the risk affords the Underwriter information as to whether it is acceptable or not.

Q. Suppose it has been declined by another company, what do you do with it?

A. Hold it up and ascertain why the other company declined it.

Q. That would require an investigation, wouldn't it?

A. That is right.

Q. So that the only discretion the Underwriter in your office would perform in a case of that kind would be to look at the policy and say that it has to be held up on account of the way that particular question is answered, isn't it, and that follows as a matter of course?

A. I don't quite understand. You mean if there was nothing else wrong with the application at that particular point that is all he would do?

Q. As I understand you, it is a matter of routine; if the application shows on its face that another company has rejected it, then you will not pass it until an investigation has been made as to why the other company had rejected it; is that correct?

A. That is correct unless the agent has furnished us with additional information at the time he submitted the application to us, explaining why it has been previously declined or cancelled.

Q. If an application comes into your office showing a previous rejection, who would pass on that, on the ultimate [fol. 855] issuance of the policy or rejection of the application made to your company?

A. Do you mean would the Underwriter pass on it?

Q. I mean who would pass on it in your office or would you send it to the Home Office?

A. In some cases the Underwriter would pass on it himself. If he was in doubt he might bring it to me and discuss the case with me. In other cases it might be submitted to the Home Office with the full story for their decision.

Q. Then when testimony was given in this case of an underwriting capacity to pass on a number of these claims a day, this testimony has reference to the cases where the application blank disclosed no reason at all for the exercise

of any judgment but the policy should issue as a matter of course? Isn't that true?

A. Oh, no. I had in mind the general run of applications, some of which go through without any hitch and some of which we find points on which the application may have to be held up for a short while.

Q. If the application has to be held up it is usually referred to you to the Home Office, isn't it?

A. No, I wouldn't say that. I would say that in many instances the application is held up for the Underwriter might either write to the agent for additional information or he might order a special investigation by our Credit [fol. 856] Reporting Bureau or he might write to the former carrying company direct and ask them why they refused to write or relieved themselves of liability on the risk.

Q. When the local agent himself issues the policy without sending it to the Home Office, I believe you stated that the Underwriter in that agent's office didn't have any direct contact with the assured; is that true?

A. No, I did not state that. I believe what you are referring to is that I stated that the local agent usually did not have an Underwriter in his office, that the application went direct to the policywriter.

Q. Isn't it a fact, Mr. Osborn, that when this agent himself goes out and gets all of this information and puts it into that blank he is practically acting as an Underwriter when he does that?

A. Yes, that would be a fact.

Q. In other words, he acts as his own Underwriter and elicits the information as he goes along that will enable him to determine whether or not he should exercise his judgment in favor of taking the risk or rejecting it?

A. That is right.

Q. You spoke of these agents that work out of your office on a commission basis. Do these agents represent any other company besides yours?

A. We don't write steam boiler insurance and so we have arranged for those agents to represent the Hartford Steam [fol. 857] Boiler and Inspection Company.

Q. They don't represent any competitor of yours, though?

A. No.

Q. Do you give those agents office rent?

A. Yes.

Q. Do you supply them with stenographic service?

A. A certain amount.

Q. Stationery and office supplies?

A. We supply them with stationery.

Q. The status of these office agents then toward your company is materially different from that of the general run of agents throughout the State in that these other agents seem to represent other companies and have a choice or option whether to place their business with your company or with the other companies; is that not true?

A. It is true to the extent that you set forth, yes.

Q. And they also usually pay their own office rent and their own stenographers and the expense of operating their office too, do they not?

A. That is true.

Q. How does your office handle the business originating outside of the State in the casualty and surety lines?

A. Of course, if the business originates outside of the State it goes to the Branch Office located in the territory where the business is originated. That office, in turn, either issues the contract and sends it to us for countersignature or orders the policy to be issued from our office.

[fol. 858] Q. What percentage of those cases are issued from your office, would you say?

A. I don't have any accurate knowledge on that. If it is a risk covering in a number of states it is usually issued by the originating office. If it is just an individual risk in Virginia it is usually issued by our office.

Q. What is the best estimate you have as to the percentage of these contracts which are confined to Virginia and those which cover in other States as well?

A. I would say that the majority of them are issued here. By "majority" I mean of the total number of contracts. Some of these larger risks, covering in a number of States, are issued in another office.

Q. In these contracts that come to your office to be written in your office, who does the underwriting work in connection with them?

A. Our regular staff of Underwriters.

Q. If there is any engineering work to be done in the way of determining the classifications and automobile fleet policies or Workmen's Compensation Policies, who would do that?

A. Our Underwriters would or the inspection made by the Inspection Department.

Q. Is it customary for your office to do that in contracts of that type which come in, whether from within or without the State?

[fol. 859] A. No, the policy is usually issued on the basis of the order that we receive.

Q. A policy that is negotiated by a broker outside of the State is issued without any representative of your company having any contact at all with the risk itself in Virginia; isn't that true?

A. You mean prior to issuing?

Q. Yes.

A. No. Like most companies, we have certain risks that we will not issue policies on until we have inspected them and the originating office can order the inspection and not pass the risk before sending us the policy for countersignature and, in case the application were sent to us for issuing, we would order the inspection in compliance with our company's rules prior to issuing the policy.

Q. Does your Engineering Department service these out-of-State solicited risks covering in Virginia?

A. Yes.

Q. Does it render the same service to them that it does to the risks which are negotiated inside of Virginia?

A. Yes, they receive their instructions to service from other offices or from the Home Office and those instructions are just as binding on the engineer, as any instructions that we may give in connection with our own risks.

[fol. 860] Q. Does your Engineering Department receive copies of all these Virginia coverage risks?

A. I am not sure whether the Engineering Department receives copies. We receive copies and have copies in our office and whether they refer to our general file for that information or have separate copies for themselves, I am not certain. I am inclined to believe that they use our general copies.

Q. Does your Engineering Department have standing, general instructions to service all Virginia risks, regardless of whether they originate in Virginia or outside or do they wait until they get some specific request from an out-of-the-State agent, broker, or a Branch Office before servicing these out-of-State negotiated Virginia risks?

A. It is all the same, regardless of whether the policy is written in Virginia, originated in Virginia, or produced by a Virginia or out-of-the-State agent.

Q. You say it is all the same. Do they have standing instructions to service all of them?

A. Yes, all of the type that we service.

Q. And they are not required to wait for the request of the out-of-State Branch Office or Home Office before they do that, are they?

A. Of course, they have got to have notice of the coverage.

[fol. 861] Q. Do they get that as a matter of routine?

A. Yes.

Q. So that after they get that notice that this coverage has been contracted for, then it becomes automatically the duty of the Service Department to render such service as is appropriate to that risk, regardless of whether it originated outside of the State or not?

A. That is right.

Q. These so-called company office agents who operate on a commission basis and not on a salary, out of your office, do they undertake to service the risk that they procure or do they rely on the servicing departments of your company to do that?

A. They undertake to service the risk in the same manner that agents located outside of our office do.

Q. Do they also write casualty business—those office agents?

A. Yes.

Q. Would you have any objection to stating whether or not in cases since June 21, 1938, where you did have the contracts which were produced outside of Virginia, or any of them, signed by a local resident commission agent, you furnished this agent or had readily available to him in your office a copy of the coverage contained in the contract which he countersigned?

[fol. 862] A. We have in our office copies of coverage of all contracts that have been countersigned.

Redirect examination.

By Mr. Christian:

Q. Are the practices of the Richmond Branch Office and its personnel, and the functions of that office and its personnel, similar to the practices and functions of other

Branch Offices and their personnel of your company in other States, or different?

A. They are very similar.

Q. Have you had an opportunity to actually observe that in your employments in the other vicinities to which you referred in your testimony today?

A. Yes, as I have been located in a number of other Branch Offices.

Q. And a man could go out of your Branch Office and go into one of those others to do the same kind of work without any instructions whatever, couldn't he?

A. That is right, yes.

Q. In respect to these contracts which are produced outside of Virginia and cover in Virginia, I had been under the impression, until I heard your evidence on the stand today, that it was the general practice of the stock companies admitted to Virginia, such as the plaintiffs, that those policies should be written either in the localities of production or at the Home Offices and then sent to Virginia merely for countersignature. As Mr. Adair testified, that was so in respect [fol. 863] of his company and I got the impression, both from his testimony and that of Mr. Nichols, that it was so as to companies generally. I understood today from you, however, that such is not the case with your company. Is that correct?

A. I testified that in some instances we issue the policy from our Branch Office and that is correct.

Q. And that is a policy that is produced outside of Virginia and covers in Virginia?

A. That is right.

Q. In that case has the order from the producer for the policy or the application, as it has sometimes been called today, been underwritten and endorsed as approved in another Branch Office of your company, away from Virginia, before it comes to your Branch Office?

A. In some instances it has been underwritten before it came here and we were merely instructed to issue and, in other instances, we underwrite in the same manner as we do if it comes to us from one of our regular agents.

By Mr. Christian:

Q. Do you ever get policies from the Home Office for countersignature?

A. As far as I know, we do not.

Q. To be certain that I have got the record clear, in speaking of this business that is produced outside of Virginia and covers in Virginia, what portion of the contracts are [fol. 864] prepared outside of Virginia and sent to you for countersignature and what portion of the contracts do you prepare the policies as well as countersigning them?

A. I will say that in most instances, policies are prepared in our office here.

CHANNING F. MACNEIL, called as a witness by the plaintiffs and being duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. MacNeil, you are a plaintiff in this case, I believe, and the Manager of the Casualty Department of the Virginia Branch Office of the plaintiffs, the Travelers Insurance [fol. 865] Company and the Travelers Indemnity Company, which Branch Office is in this building, in Richmond; is that correct?

A. That is right.

Q. Please say what differences, if any, exist between Tabb, Brockenbrough & Ragland, on the one hand, and your office agents Maurice Tyler and John E. Woodward on the other hand, with respect to the extent of their ownership of their expirations?

A. None.

Q. In your office, do you have responsibility for the collection of premiums from agents, or does the Cashier have that responsibility?

A. The Cashier has the direct responsibility.

Q. To whom does he report?

A. The Comptroller of the company.

Q. In Hartford?

A. In Hartford.

Q. Is he in any manner under your supervision?

A. No, sir.

Q. I believe, however, that under your contract, if he asks you to assist him in collecting an amount from an agent and you do not want to terminate the contract of the agent, it would be your duty to assist him, would it not?

A. Correct.

Q. What are your functions for the Travelers Insurance [fol. 866] Company in your capacity as Branch Manager?

A. Underwriting and production.

Q. Do you have authority over payroll auditors, engineers, claim personnel, bookkeepers, accountants, stenographers, policywriters, or messengers connected with the Branch Office?

A. I do not.

Q. To what extent do you make use of the services of the payroll auditors, engineers, and claim personnel beyond the extent to which Tabb, Brockenbrough & Ragland are entitled to do so?

A. Not in any other way.

Q. Do you have any more authority over them than Tabb, Brockenbrough & Ragland have over them?

A. I do not.

Q. Under the custom and practice of Virginia resident commission agents, is it any part of their usual duty or custom to inspect automobile risks themselves, as distinguished from causing inspections to be made by the Engineering Department?

A. From my knowledge over a long number of years, I would say that the agent, as a rule, does not inspect automobiles wherever he has the facilities of an engineering department.

Q. Well, do you think that in selling contracts they represent that they are, themselves, going to inspect them, or do [fol. 867] you think they represent that they are going to get the inspection done by the Engineering Department?

A. I think in the case of a fleet policy they probably represent that the Engineering Department will inspect the risk and give complete service.

Q. What do you think they would do in the case of an individual automobile risk? Would anything be said about inspection?

A. Not to my knowledge.

Q. Please state what is the average premium on casualty contracts written in your office?

A. $30.50.

Q. What is the average life of such contract, carrying each renewal as a new contract?

A. In my estimation, it is approximately seventeen months.

Q. Did that business include any health and accident business?

A. It did not, nor any fidelity and surety business.

Q. In your opinion, would the average Virginia resident agent have, on the average, the same average premium and length of life or term of contract as your office, or would it have larger or smaller figures?

A. I should say that the average would be the same for the same lines.

[fol. 868] Q. How much time would you estimate the average Virginia resident commission agent spends either in rendering some service himself on his existing contracts or in securing the rendition of such service from the company?

A. I should say, from my observation over a long period of years, that the agent might possibly spend on an average probably 50 minutes or 60 minutes out of a day. Perhaps half of that would be in the morning, perhaps the other part during the latter part of the day. Of course, some days he might spend a great deal more than that, some days he would not spend any, and my statement is simply one based on judgment—not on any one agent, but on a great number of agents both in and out of the Branch Office.

Q. Is it part of the duty of a casualty field man, in getting new agents, to try to procure as his agents persons who are acting as agents for other casualty companies?

A. Yes, sir.

Q. Do you make such efforts?

A. Yes, sir.

Q. Please say whether, in the course of your efforts to get agents of other companies to change their connections and to become the agent of your company, it often happens that they object on the ground that they do not want to give up the service facilities of the company they are presently representing?

A. That is true.

[fol. 869] Q. Do you ever have these people express an unwillingness to give up the claim and engineering services of the company they are then representing?

A. Yes, sir.

Q. Do you find you are always able to convince such prospects that the claim and engineering services of your company are better than those of the company you represent?

A. Unfortunately, no.

Q. In such cases, do you explain to the prospect the nature of the services available by your Claim and Engineering Departments, and have them say to you that the

services they are then receiving from their companies are equal to the services of your company?

A. Yes, sir.

Q. How many separate contracts, on the average, would you say result from a hundred solicitations by a Virginia resident agent of prospective customers who are not then his customers?

A. I should say approximately ten percent.

Q. Suppose, instead of soliciting people not then his customers, he solicited present customers for new contracts and he tried a hundred customers; how many contracts would he get out of the 100 solicitations, in your opinion?

A. I should say approximately fifteen percent.

Q. Is it a part of your duty, when agents become discouraged over the lack of success in their solicitation, to inform them of what their expectancy should be as to suc-

[fol. 870] cess and to encourage them if their results ought not, in fact, to discourage them, even though they think they are discouraged?

A. Yes, it is part of my duty.

Q. If such an agent sells a hundred contracts to separate customers on the same date, with an average life of seventeen months, as you have said it would be, including the casualty lines, other than accident and health, how long would it be, in your opinion, before all that business should reasonably be expected to go off his books?

A. I should say six years plus.

Q. How did you arrive at that?

Q. That would not be the average life, but it would all be gone at the end of six years, would it not?

A. That is true.

Q. With an average life of a little more than three?

A. That is right.

Q. About what rate of commission will a successful general insurance agent in the smaller cities of Virginia receive on his annual premiums?

A. I should say approximately 15 percent.

Q. About how much of that would you think he would ordinarily spend in the payment of expenses of all kinds?

A. Five percent.

Q. Giving the same figures as to the agents in the larger cities, about what would their commissions be?

[fol. 871] A. 20 percent.

Q. And their expenses?

A. Eight percent.

Q. In what States other than Virginia have you been a casualty field man?

A. Wisconsin, Connecticut and New York.

Q. What differences exist between the situations and practices as to which you have testified in these other States and the corresponding situations and practices in Virginia?

A. Similar in all the offices I have been, generally speaking.

Q. In the case of a Virginia resident agent reporting to the Richmond Branch Office, reporting business covering outside of Virginia, does the Richmond Branch Office usually send the order for the policy to the Branch Office in the locality of coverage in order that the policy may be written there, or does it usually send it to the Home Office for it to be written there, or is it usually written in the Virginia Branch Office?

A. On all risks outside of automobiles, the order is transmitted to the Home Office, the policy is issued there and sent to the Branch Office in the State in which the risk is located, and countersigned there and then sent to the Richmond Branch Office.

[fol. 872] Q. Where are automobile fleet policies usually written if produced in Virginia and covering outside of Virginia?

A. Well, if the assured has a Virginia address, covering in Virginia as well as other States, that policy is issued here.

Q. Otherwise, where is that fleet business written—not single risks, but fleets?

A. If it has no Virginia address and covers in States outside of Virginia, it will be sent to the Home Office for them to issue.

Q. Do other Branch Offices of the Travelers follow the same plan and have personnel with the same qualifications and duties as your Branch Office?

A. They do.

Q. In your opinion, can a Virginia countersigner ordinarily make an efficient check in Virginia of the correctness of the writing of a contract produced outside of Virginia and sent to him for countersignature where the business is business other than Workmen's Compensation or automobile liability?

A. He can in some cases, and in some cases he cannot.

Q. Why is it that he cannot check in some cases?

A. Well, in certain risks where they are written at manual rates, he can check that with his own manual, but if they were not written at manual rates—in other words, written at what we call equity rates, or experience rates, you could [fol. 873] not check it because he would not have what the experience factor or the equity credit was.

Q. Would you say that most of the risks covering countrywide or over a section of the country, involving substantial premiums are written at manual rates, or would you say that most of them are written at equity or experience rates?

A. Well, it is a combination of both. Certain States are not allowed to use equity rates, and I should say that that varies. I can't give you the exact ratio. I have no way of checking that. I think that most of the larger risks—I mean by that risks such as large chain stores where they have risks probably in every State, or the majority of States, that lines other than compensation and automobile are either experience rated or equity rated.

Q. I believe you stated your office issued about 24,000 contracts a year; is that correct?

A. Approximately correct, yes, sir.

Cross-examination.

By Mr. Staples:

Q. You spoke of these office agents. How many do you have?

A. In Richmond we have fourteen, in Norfolk we have seven.

Q. Do they have their offices in the same quarters as the Branch Office of the company?

A. The fourteen in Richmond do.

[fol. 874] Q. How about in Norfolk?

A. They have their office in the Royster Building.

Q. Does the company rent their office space?

A. They do.

Q. What is the difference in the relationship of those agents to the company and the other agents that rent their office space and pay their own office expenses?

A. The only difference I can give you is this, that the Branch Office agents that we have only represent the

Travelers in the various departments, such as the life, accident, fire and casualty; they have no other company. They are supposed to devote their entire time to the Travelers' interest, and not to any other company's, and in consideration for that, they are called "Branch Office Agents" and given Branch Office space. Other agents outside represent any companies they want to and as many as they want to. We have no restrictions.

Q. Is there any difference in their commission rate?

A. No, there is not.

Q. Then, you really, in effect, or your company, pay these office agents more than you pay the independent resident agent that has a choice of placing his business with other companies represented by him, do you not?

A. Well, when you consider that most of these Branch Office agents that we have are principally life and accident agents, I would not feel that that was a true statement. In other words, you understand, Mr. Staples, they do not de- [fol. 875] vote their time principally to casualty. They are primarily life and accident men.

Q. Oh, I did not understand that. I did not know we had any life insurance business mixed up in this.

A. With most of these agents, the preponderance of their business is life and accident business, and the casualty business they write is a minor part.

Q. In other words, they do not amount to much in the casualty business?

A. Some of their business is that, but generally speaking that is true.

Q. The casualty business, then, is a side line?

A. It is supposed to be a side line, generally speaking, yes, sir.

Q. And you would consider that the office expense paid by the company was conceded to them largely by virtue of their activities in the life and accident field?

A. That is true.

Q. Now, what authority, if any, do you, as Branch Manager, have over the engineering service department and the inspection service?

A. Well, I have no authority to hire or fire anyone connected with the Engineering Department or to tell them what to do. I can only suggest certain things. When we have something come up that needs inspection and the request is made out by me to him stating what we would

like to have him do, he is under no obligation to do it unless he wants to. In other words, it is left to his own judg-
[fol. 876] ment and initiative whether he will make the inspection right away or when he gets good and ready.

Q. It has been the testimony of other Branch Office representatives in this case that very frequently in certain types of risks involving principally automobile liability policies and Workmen's Compensation policies, that the intelligent underwriting of the proposed risk would have to be based upon the result of some sort of inspection by the engineering and inspection service; is that true in your company?

A. It certainly is, yes, sir.

Q. Now, if a proposed risk comes in to your office and you request that service, is the Engineering Department under obligation to render it?

A. Oh, yes, as soon as he can. Of course, lots of times an engineer has a certain schedule made out for going into certain territories and he has made engagements to make other inspections, and if he can make that inspection at that time, he will do so. Sometimes it has to be postponed until it is convenient for him to do that. It is a matter of convenience on his part whether he can do it immediately or later.

Q. If the resident agent, himself, is a person in whom your company have confidence—and I suppose they would have, or he would not be their agent—and he has made this inspection and so reports at the time the application is
[fol. 877] sent in, would your company rely on that, or not?

A. On any risk that had any real reason to inspect, if it is necessary to make such a request, it is done, because there are certain risks that are beyond the power of the ordinary agent to determine. He is not qualified to do that any more than I would be—certain features about engineering that the average agent doesn't know anything about—the safety of work hazard.

Q. How about a correct classification of compensation employees? Would a resident agent be qualified to do that?

A. I should say so, because, after having made an inspection, I think that they are furnished with the manuals and also a copy of the policy, showing the way it is written, and in addition to having the classifications that show how the policy is written, he has the benefit of having an inspection made and being there to actually see if the conditions con-

form to the way the policy is written. In addition to that, he has a manual which he can consult and find out if these divisions of payroll are permissible, by the manual rules, rates, and regulations, so, he has more than one way of finding out whether it is properly written. If there is any doubt in his mind after going through with all that, he would probably confer with the underwriters, such as Mr. Gallaher—if there was any doubt in his mind about his opinion after having consulted the policy record that he has and the manual.

[fol. 878] Q. He could at least ascertain all the pertinent facts and material facts on which the conclusions would be based, could he not?

A. The engineer?

Q. No, the resident agent, in classifying employees for Workmen's Compensation Insurance?

A. Are you speaking now about the writing of the policy, or inspecting it?

Q. I am speaking of the time before the policy is written.

A. There are certain cases that the agent can do that and there are other cases where he could not do it, in my estimation.

Q. Give me an illustration of some sort of fact relating to the classification of employees for rating purposes that a resident agent would be unable to ascertain.

A. Well, there are certain risks where he might classify all the employees in two separate classifications, believing that they had both classifications in the plant, when, as a matter of fact, if he were to examine the manual, he might find that it was possible that he could not use two classifications, that he had to use simply one, that it was a proposition where you had to use one instead of two classifications.

Q. Well, is there any reason why the resident agent cannot get that out of the manual, as well as the engineer can?

A. He might get it out of the manual if he was competent, but lots of these agents are not competent to do that.

Q. I am assuming you have a competent agent.

[fol. 879] A. Are you talking about our agents?

Q. I am talking about what a competent agent ought to know. If he is incompetent, he has no business being licensed by the Insurance Department.

A. If he is competent, he could do that, yes, that is true.

Q. Now, is there anything relating to the underwriting that a competent resident agent cannot do in the ascertain-

ment of facts, so far as classification relating to employees is concerned, in Workmen's Compensation Insurance, prior to the issuance of the policy and on which the premium rates would be based, that an engineer could do?

A. Well, you speak of the words "competent agents". I say this without any reflection on the part of any Virginia agent, but I think that there are very few agents, even the larger ones, that are competent to underwrite compensation policies. I am talking now about the larger risks. They might perhaps get the classifications, perhaps correct, but I do not think they have the judgment to say whether that is a risk that they should write from an underwriting standpoint.

I don't know which you mean. You seem to be talking about both. You have got them both mixed up, at least I have.

Q. No; my question is confined to the ascertainment of facts and presenting those facts to your underwriter.

A. I think they probably could get the general facts in order to write the policy to present to him—that is what you mean?

[fol. 880] Q. Yes. Then, this resident agent might be able to save a lot of time by doing that, if your engineering service department is engaged in other matters, as you stated some time ago; isn't that true?

A. So far as the classifications are concerned, yes.

Q. Now, what other matters would be deemed necessary to investigate in connection with a proposed risk before the policy is written for which you think it would be necessary to call in the engineering service?

A. I will give you two illustrations, Mr. Staples, that will probably clear the question up: Suppose an agent goes out, and he is competent, and gets proper classifications on a portable sawmill, and gets the proper rates, and gets everything 100 percent correct and brings it in to our office; we would not issue that policy because, in the first place, we would have to send an engineer out to find out about the physical facts of that plant. One of those things is the inspection of a boiler. Now, I do not think the average agent is competent to go out and inspect a portable sawmill boiler, and I do not think they would, because usually they are isolated risks out in the woods, away back from the main highway, and he would have to "Get out and get under,"

so to speak, and if he did, he probably would not know what it was all about; and the reason we do that is because in a portable sawmill one of the most serious hazards is the fact that they are old and secondhand and, if they should explode, there is a compensation hazard, and on that same [fol. 881] risk, I do not think the average agent you assume is competent knows anything about the manner of safeguarding saws and machinery and the safe practices of employees, what they should and should not do.

Q. I can well understand that in respect to boilers that is true. How about ordinary machinery policies?

A. I do not think the average agent is competent to go out and inspect a boiler risk and bring in the proper data upon which to issue a policy.

Q. Did you say a boiler risk?

A. Yes, sir.

Q. I had reference to other types of machinery.

A. Do you mean machinery in a plant?

Q. Yes.

A. I still say the same thing—I do not think the average agent knows anything about the machinery in an average plant, or the safeguards or anything to do with it.

Q. How about Workmen's Compensation?

A. I say the same thing.

Q. And automobile fleet policies?

A. I still say the same thing. I think he may know a little bit more about the automobile fleet policies than about inspecting machinery in a plant, or a sawmill boiler, but I think his knowledge is limited there also.

Q. Do you mean to say that before these policies are issued of these types it is customary in your office to have [fol. 882] the engineering service inspect those risks?

A. Which risks do you mean?

Q. Any of these types of risks in which you state that the resident agent is not able to obtain sufficient information on which to base the underwriting, such as Workmen's Compensation, boiler insurance, machinery policies, elevator policies, and automobile fleet policies?

A. In Workmen's Compensation there are certain policies that we will not issue until we have an inspection first. The same thing is true of boilers, the same thing is true of fleets, the same thing is true of machinery, and by the same token,

there are certain policies in every one of those lines that we will issue. It all depends on a matter of judgment.

Q. How about plate glass insurance?

A. We will issue policies on plate glass without inspection, or hold them up until we have inspection, either way. In other words, Mr. Staples, it is a matter of judgment whether we will issue it before or whether we will not, depending on the nature of the risk and the hazard.

Q. Now, is it usually customary in large risks to have this inspection service before you issue the policy, or not?

A. It doesn't make a particle of difference about the size.

Q. Does the size of the risk have anything to do with the probability of whether or not inspection would be necessary?

[fol. 883] A. No, sir.

Q. In other words, a fleet involving three or four hundred cars would not be any more likely to require inspection that one involving one car?

A. Well, we give that inspection on a fleet policy automatically.

Q. I am talking about the time prior to the issuance of the policy.

A. No, we do not find it necessary as a rule to hold up issuance of a policy. Then, again, there might be a case where we would. Let me give you an illustration of what I mean; if we had a fleet of commercial automobiles that we knew was a good risk of its kind, and we have ways and means of checking up what the experience is from the Bureau, and we know or the record indicates that it is a good risk, we probably would not inspect that risk before we issued the policy; we would automatically do that afterwards—what we call "Fleet Service".

Let us take another case. Here is a taxicab company, or a trucking risk: In looking up, we find that the experience on it has not been so good, and we have some reason, best known to ourselves, that we want to go into the question of what this firm pays the driver, whether $15 a week or $30 a week, and whether they do night driving, and a lot of information. Now, instead of issuing that policy, like we do the other I have just mentioned, we would not issue that policy until we had an engineer go and get all the information which the proposal does not disclose to us at all, which gives us a great deal of additional information which it

[fol. 884] would not be possible to put on a proposal unless it were a pretty bulky document.

So I will state it this way: In certain cases we do, in certain cases we do not, depending on judgment.

Q. When that is done, is that information submitted to the underwriter, or to you, or to whom?

A. To the underwriter.

Q. And he passes on whether the policy or risk is bad judgment?

A. Well, he passes on it as far as he can and then, if he is in doubt about it, he takes it up with either my assistant, Mr. Cosby, or myself, and we can't pass on it—it is something too involved—we send it to Hartford.

Q. Is that generally customary in all these casualty companies?

A. I think so, yes, sir.

Q. You think they follow the same underwriting practice along those lines?

A. I feel that they do, generally speaking, yes, sir.

Q. Do you know of any exceptions to that?

A. No, I think it is pretty generally done.

Q. Now, tell me what is the practice in relation to a contract negotiated in New York or some other out-of-the-State place involving one of these cases where an engineering inspection is called for prior to issuing the policy. What does the company do about a case of that kind?

[fol. 885] A. This office does not do any of the underwriting on such risks as you have outlined.

Q. Well, it would be necessary for the New York office to call on the Engineering Department here to do that work before they wrote the policy, would it not?

A. I presume it would, if it was one of those types of risks I have described.

Q. In other words, it would be very poor underwriting not to do that, would it not?

A. If it was a risk where the judgment was that it should be inspected before, but it is a question of the judgment of the New York office, whether they would decide it would be necessary to have the inspection before the policy was issued or not.

Q. I believe it is the practice of a large number of mutual companies to compensate their agents solely on a salary basis, that is, the agent who performs substantially similar

functions to the commission agent of the Travelers and other stock companies, is it not?

A. Well, sometimes some of the companies do that, and some pay the same as the commissions to agents.

Q. Most of them follow that practice?

A. I would say no, considering all lines of insurance written. Two of the big companies, I believe, the Liberty Mutual and the American Mutual, are supposed to have nothing but salaried employees. I understand, however, [fol. 886] there are certain others that do pay commissions. Other mutual companies may have a salaried manager, if that is what you mean. They also pay commissions to agents; for instance, Lumbermen's Mutual probably has a manager here that receives a salary, but most of their agents receive a commission.

Q. Are there any mutual companies engaged in local casualty business?

A. Yes.

Q. I mean, that are not engaged in an interstate business?

A. Not that I know about.

Q. I believe that all of the stock casualty companies have adopted the practice of using commission agents for the writing of their business, or the securing of their business; isn't that true?

A. Securing of the business, yes, sir.

Q. Do I understand you to take the position that substantially the only function an agent of that kind performs is negotiating the business?

A. No. I think he gives a certain amount of service to his policyholders, as I have mentioned before—looking after the people on his books, and I think 90 percent of his time, in my estimation, is in getting new business. That is the way an agent has to live. He can't keep on devoting most of his time to giving service, and expect to get anywhere. He has got to divide his time, and I should say if he does not devote 90 percent of his time to getting business one way or another, that he won't be very successful.

[fol. 887] Q. You do know, though, generally, whether or not the larger volume of business in your office in a year consists of renewal contracts or new contracts, do you not?

A. Yes, I should say they do.

Q. Now, which is the greater?

A. The renewals. It all depends on the agent again, Mr. Staples. If he is a new man and has not had much——

Q. I am speaking of the average; I am not speaking of any particular agent. I mean, so far as your office is concerned, what is the percentage of new business to renewals in your office in a year?

A. That varies, Mr. Staples. For instance, in 1937, our increase in business was $130,000 over the year before. Last year it was about fifteen, I think.

Q. $15,000?

A. Yes. In other words, in 1937, if I remember correctly, it was something like $750,000.

Q. I believe you stated, however, that an agent could expect the business to stay on his books for an average of three years plus, did you not?

A. That is right.

Q. Is it not also true, Mr. MacNeil, that when an agent has a client's business, he usually carries more than his casualty business and would probably have his fire business and any other type of insurance that that customer carries, speaking generally?

A. Well, as a rule, he might have more than one line, sometimes only one line. It is rather difficult to say how much [fol. 888] business an agent will have with any one man. Sometimes they have it all, sometimes they have just an automobile, sometimes they will have a fire policy (in which I am not interested at all), or an accident and health policy, or a fidelity bond. If the question is whether most of our agents have more than one casualty line, including fidelity and surety bonds and accident and health, I would say that in the majority of cases they probably have more than one line.

Q. You think, then, that a man would not place his casualty business with the same agent with whom he would place his fire business?

A. That frequently happens.

Q. Isn't that the general custom?

A. To place his casualty where he has his fire?

Q. Yes.

A. In some cases yes, and in some cases no.

Q. Well, I am assuming now a case in which an agent does carry several lines for his client, and I am asking you whether or not it is not to the interest of that agent, in order to retain that business, not only in the particular casualty policy which he may carry, but in the other lines of protection also, to render the very best service he can to his client

as an inducement to the client to continue placing his business with him?

A. I presume it is, yes, sir.

Q. What is the answer?

A. Yes.

[fol. 889] Q. So that you cannot measure the amount of service which an agent would render to a client of his who has a casualty policy with him solely by the value to the agent of renewing that casualty policy, can you? In other words, you have got to take into consideration that the agent may feel that it is to his interest to spend lots more time in servicing that casualty policy than he would receive compensation for in the way of his commissions?

A. That is true.

Q. But, nevertheless, it would be to the interest to devote that time to the casualty policy in order to please his client and to secure other lines of insurance?

A. That is true.

Q. You say that a countersigning agent, in a case where the rates applicable involve what are called "equity rates and experience rates," would not be able to obtain this information from an inspection of the risk itself?

A. Inspection of the policies.

Q. Or of the risk?

A. Either way.

Q. Why wouldn't he have to get this information?

A. I think the procedure is that he would have to get the consent of the assured, in letter form, to show that he was closely enough in contact with the risk to present that request to the National Bureau in New York to get the rate. In other words, he could not, of his own initiative, simply [fol. 890] write to that Bureau—in certain cases that is true, and in certain cases we could—but his company could get it if he furnished the proper name of the assured and the expiration date and asked his company to get that information from the Bureau.

Q. Do you mean that an agent who is about to write a policy can get that information without the consent of the assured?

A. In certain cases, I think that is true.

Q. What kind of cases do you refer to?

A. Equity rating.

Q. What do you mean by "Equity rating"?

A. Well, it is a rate that is given by the company, where it is permissible in certain States, based on the experience of the risk but where there is no regulation of that risk.

Q. Would that apply in Virginia, or not?

A. It would on certain lines—not on automobile or compensation.

Q. It would not apply on any line where the State itself prescribed a rate?

A. That is true.

Q. But experience rating would apply even there, would it not?

A. Yes.

Q. Well, the agent would be given that information, then, as to automobile rates and Workmen's Compensation rates if he applied to this National Bureau?

A. In Virginia, now, you are speaking about?

[fol. 891] Q. Virginia agents, yes.

A. On a risk outside of Virginia?

Q. Inside of Virginia.

A. We would have to apply right here, to the Bureau here, for an automobile rate here, or compensation. He would not have to go——

Q. I am talking about the experience rating, not the equity rating you are speaking of.

A. On a risk in Virginia?

Q. Yes.

A. I may be mistaken about the requirements in order to get that rate. I think I made the statement that he could not check it if it was either experience or equity rating. I think that if he wants to get the renewal rate on that risk—we will put it that way—he can apply to his company, giving them the name of the risk and the expiration date, to show that he knows what he is talking about and is in contact with the risk, and then his company applies to the National Bureau, giving the correct information. I mean by that, if he does not give the right name, or if he does not give the exact date, they will not furnish that to his company that inquires, but, if he does get that information, then they will furnish that information to him.

Q. Now, if the assured be a resident of Virginia or have a representative in Virginia who would like to have the local resident agent check that experience rating with the Bureau, or the equity rating in cases where that is applicable,

[fol. 892] he could confer on the local Virginia resident agent authority to get that, could he not?

A. That is true.

Q. So that in cases of that kind the agent would be in a position to investigate the facts underlying the formulation of that rate, and if he thought it was not correct, he could take it up with the Bureau or suggest to the company or somebody else to take it up with the Bureau with a view of reducing it; is that true or not?

A. Provided he was close enough to the assured to get that cooperation. But the average agent, going into a risk that he knows nothing about, written by, we will say, a New York broker, and he wants to analyze the policies and check them up, he might get that far, and, if not, he could not check this rate, and unless he had enough contact with this assured to say, "Mr. So and So, I am unable to check this rate and I wonder if you would give me permission to write to my company and give them the facts in this case in order for me to check it up"; well, I think that the average man would not allow him to go very much further. He would realize, perhaps, that he was exposing himself in such a way, that, instead of thinking this fellow benefited him in any way—he knew he had a pretty good rate but didn't *how* how he got it, and he would be supplying this fellow with information that might go down to his disadvantage, and he could do it, but the chances are he would not.

Let us take the case of yourself. You had a pretty good rate on some risk, and a man came to you, and you knew your agent had given you a very fine rate and it was below [fol. 893] the manual, and I came into your office and I would say "Mr. Staples, I would like to see your policies. I can't find out how you got such a fine rate; I can't check it," and to try to find out how you got that rate, I would ask you for all this information. Well, I don't think you would furnish it. You would say, "Wait a minute. That is up to you." Now, I think that is the natural thing a man would do. You asked me the question, could he do it. If you want to break down and tell him all about how your New York broker got that rate, and tell him all about it—"Here is the policy, here is the letter; you write the company and tell them you want to know all about it"—he could do it, but I don't think that is the practice of most people.

Q. I think you are entirely correct, Mr. MacNeil, in cases where a man is under the impression that he has probably

got a better rate than he is entitled to, and naturally that man doesn't need any service. But what I had in mind, more than that, was a case where a man was dissatisfied with his rate and then the agent comes to him and says, "I may be able to help you with this thing. It looks to me like your rate is too high. You have given me the facts about your experience and, if you desire, I will be glad to reopen this matter and see if I can't get a better rate for you." Now, what would be the reaction of a policyholder of that kind?

A. We are speaking now of equity rating, aren't we?

Q. I was speaking of equity rating and experience rating, both.

A. Well, if the assured was dissatisfied with the rate, I think he would take it up with his New York broker, I do not think he would take it up with the local man.

[fol. 894] Q. The local man takes it up with him, under the assumption of my question.

A. I think, in most of those cases, that man that is here would simply say, "My insurance is handled in New York and I have nothing to do with the placing of it. The policies are all kept in New York."

Q. You think the local representative would not feel that it was incumbent upon him to take enough interest in the matter to try to save his company money if he thought it was probable he could do so? Is that your idea?

A. My idea is this: The local man here has no jurisdiction over placing business or no jurisdiction over the policies. They are probably kept in New York. He could not give the local agent here what he wanted in the way of information and, if he wanted to, he probably could not. Probably it would be the concern of the insurance manager, the brokers, or both. They rely on someone in New York, Chicago, or Philadelphia, who would resent any interference by some local representative, Branch Manager or whatnot to give out information about the insurance which he had nothing to do with.

Q. Don't you know, Mr. MacNeil, that every State Manager of any industrial plant or business of any kind which is a branch of a national organization is primarily interested in making a good record of profits on his State operation?

A. I presume he is.

[fol. 895] Q. Now, do you not also know, Mr. MacNeil, that in a final accounting as to whether or not the State opera-

tion is profitable or unprofitable, there would be charged against the expense of operation, on overhead charges or whatever accounting system might be adopted, the cost of insurance protection incurred in that State?

A. Yes.

Q. Therefore, the local man would have a very direct and primary interest, would he not, in reducing those costs, because it would reflect directly on the ultimate status of his State operation?

A. Yes, I think he has got that interest, but I think someone over him has that interest just as much as he has, and is familiar with it, not only from the standpoint particularly of Virginia, but also all over the United States where they were operating, and that that man probably is more competent to make decisions about that and watch those things than this manager you speak about, who is probably managing the business and is probably not very expert in insurance matters. In other words, it comes down to this: He is the manager of the company in whatever line they are following and probably his knowledge of insurance is limited. Therefore, they have a broker, or insurance manager, if you please, who makes it a point of studying those things, and they have their engineering department and [fol. 896] they inspect these plants outside of the company's engineering department, just to safeguard that very manager and to see he is getting everything in the way of the lowest possible rate, whether it is fire coverage or whatnot, and all of those things are referred to this Insurance Manager or broker and he, in turn, advises this Manager. I think, generally speaking, on these big risks that is the way they are handled—the procedure that is followed. The necessities of the business would, I think, indicate that.

Q. I am assuming a case in which the local resident agent educates, to some extent, the State representative in insurance matters, and I am assuming a case in which it is possible for this agent actually to render some service on rate reduction on an experience basis. I understood from your examination in chief that this local man would not be in position to do anything about it, and my questions are addressed to you for the purpose of bringing out the facts in relation to whether or not the local State Manager of an enterprise of that kind would not have a very keen interest in reducing his insurance cost and would not avail himself of the services of the local resident Virginia agent if he

thought those services would be helpful and if the agent were able to lead him to that belief.

A. I think that he thinks the service he gets is probably better than the service he would get from some local agent. I also think he feels the broker in New York enjoys some [fol. 897] benefits that the local agent would not.

Q. Why would he feel that way?

A. Well, he may have been impressed by the New York broker to that effect; I don't know. I know, on certain lines, these New York brokers can, perhaps, effect better coverage and better rates, not on lines regulated by the State, but on lines not regulated by the State, such as Marine Insurance —no regulation for that—Public Liability, burglary, and plate glass. Sometimes these New York brokers can, perhaps, by the volume of business that they have, get a better rate for him and his concern than a local man could get. I say, I think that the man believes that.

Q. Well, do you believe that the broker actually renders that service, or just makes them believe he does it?

A. In some cases he probably does it, in some cases he may just make him believe it—in some cases he really does.

Q. Do you think he can get a better rate?

A. In some cases he might.

Q. On all the lines you have indicated there?

A. I have been told by the agents that because the New York brokers probably do a larger business, they can get companies, sometimes, to give a better rate than they can get.

Q. Than the local agents can get?

A. That is true, where the business is one that they can equity rate, not under State regulation.

[fol. 898] Q. On experience basis?

A. Either experience or equity.

Q. In other words, you believe that they would interpret the experience more favorably for the New York broker than they would for the Virginia agent?

A. There are some companies, undoubtedly, would do that, Mr. Staples, yes. In other words, if we wrote to a New York broker, because of his volume of business, they can get some things from certain companies—not all companies. They have, no doubt, impressed these people by that fact, and that fact has been carried on down to this local man that might be in Virginia. He has been told by the centralized man in New York, "We are getting a rate

on this of so and so, and if anybody wants to see our contracts, don't you allow them to do it." When a local man comes to him and tells him he thinks, by going over his policies, he can perhaps effect a saving, I think, with most of these larger risks that have a Branch Manager, it is a very difficult thing to get in there and check the policies. It has been my experience that you can't do it, and I don't think the average agent has any more "on the ball" than I have in getting them. I have been with many of our agents to call on these larger risks to see what was going on, and I have been treated very courteously but don't get very far.

Q. It is impossible, then, in your opinion, for a local agent to get business of this type?

[fol. 899] A. I don't say that. Take the larger risks—the National Dairy Company, the A. & P., or the Sanitary Grocery—if he would go up to the headquarters of the Sanitary Grocery Company and try to get information about their coverage here in Virginia, I don't think he would get it.

Q. You don't think they would pay any attention to him other than to show him a little courtesy?

A. I think they would say, "I am sorry, but you will have to go to Washington". We have that experience; that is how I happen to know. Any local business that the man wants to give, that is a different matter, but as far as the fleet of cars of the Sanitary Grocery Company, or D. Pender, or any of those risks, you have got to go to the headquarters in order to get anywhere.

Take D. Pender Grocery Company: The man here tried to get one of these men to talk about insurance and said, "I would like to survey your policies". In the first place they are not here; they are down in Norfolk, and when you get down to Norfolk you would have to see the head man there, but it is New York who handles the insurance under all these policies in Virginia and North Carolina, but you would have to go to that man.

The point I want to make is, the Managers here haven't any authority to allow an agent to go over their policies. In the first place, they haven't got them, and, in the second place, they would not let them do that without the consent of the Home Office. Now, if he can dig up some information on his own initiative whereby he can show them he can save them some money, and they want to reward him, that is a [fol. 900] different matter. The chances are they will take

the recommendation and won't do it, or give him the business.

Q. In case of policies written by the Travelers, where the business is sent to you by your New York Branch Offices—I suppose it would be, if it was written in New York, would it not?

A. What kind of business are you referring to, Mr. Staples?

Q. Casualty insurance along both lines; I don't know whether there is a distinction. You might state if there is.

A. If our New York Office wrote a compensation policy in Virginia, in the first place, my understanding is that they would not issue the policy there and send it to us. They would send the application to Hartford to be prepared there and it would be sent to us from our Home Office.

Q. The policy would be sent to you from the Home Office on the application?

A. Yes, sir. That is my understanding, except, in the case of New York, they have a separate underwriting division, I think, and they would prepare it and send it to us, instead of its coming from Hartford.

Q. Now, in a case of that kind, covering a Virginia risk, of one of these national corporations which does an interstate business, would your office try to take that business away from the New York Branch Office, or not?

A. Under no circumstances.

[fol. 901] Q. So that you would respect the rights of the New York Branch Manager to retain that business, would you not?

A. I certainly would.

Q. And you would make no effort to get that business down here for the benefit of your commission agents in Virginia?

A. I would not dare—I might want to, but I would not dare. In the first place, if I did do that and it got back to the New York Office or to the broker, I think he could make it very unpleasant for me with the President of the company. If he went in and said, "We wrote this business through the Richmond Office, and that fellow MacNeil decided he would like to have it in his office and he went out there and tried to get the fellow to put it with him at expiration, and I want you to either fire him or discipline him or do something." The chances are I would get a telegram, if he was a big broker with us, or even a little one, asking

me if it was true and to let him know what the full facts were. And so, with the viewpoint, of course, we don't dare and would not think of it in any way, shape, or form to go near that risk for that purpose.

JAMES J. IZARD, called as a witness by the plaintiffs and being duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Izard, where do you live in Virginia?

A. Roanoke, sir.

[fol. 902] Q. How long have you been in the insurance business up there?

A. From 1916 until now. That is 23 years.

Q. What is the name of your firm?

A. Charles Lunsford & Sons.

Q. Who are partners in that firm besides you?

A. Charles I. Lunsford, Charles P. Lunsford, and myself.

Q. How long has Mr. Lunsford, Sr., been in the business?

A. I think, about 55 years.

Q. Will you please say of what companies your agency is the agent, that is, what companies individually connected with your agency have Virginia resident agents licenses, taking the fire first and then the other kinds of companies?

A. We have 25 fire companies, as well as I remember, three casualty and surety companies, and three exclusively surety companies.

Q. What are the names of the casualty and surety companies which are in your office?

A. Royal Indemnity Company of New York, Indemnity Company of North America, and the Fidelity and Casualty Company of New York. They are the combination casualty and surety.

Q. And which are the three surety companies?

A. The Fidelity and Deposit Company of Maryland, The National Surety of New York, and the United States Guarantee Company of New York.

[fol. 903] Q. It has been stated by Mr. Tabb that in his agency there are three partners, including himself, and his son, in addition to which they have ten employees, which include five women and five men, one of the men being his licensed agent son. How does that personnel compare numerically with that of your office?

A. We have three partners; seven employees, four of whom are female stenographers, if that is the way you want it divided. One of the three male employees we consider in charge of the fire and casualty department, in addition to having supervision of the actual preparation and writing of the policies themselves. One of the other young men is under the policywriter, if you want to term him as such. The third is a solicitor and in charge of our general adjusting office.

Q. Does that underwriting man who is in charge of the fire and casualty department take orders for the policies or applications, as they are sometimes called, and get them in proper shape before they are turned over to the girls to write the policies?

A. No, sir. They originate with the partners, who, in turn, turn them over to that young man for preparation. They then come back to one of the partners for review and signature.

Q. He is just a clea .g house and supervisor for the policy writing?

A. He prepares it under our direction.

Q. Have you ever had any connection with an organization called the Virginia Association of Insurance Agents, Inc.?

[fol. 904] A. I have been a member of the organization for, I guess, 20-odd years.

Q. Is your agency still a member of it?

A. Yes, sir.

Q. Will you please state whether you have been its president and, if so, when?

A. I was president in the years 1933 and 1934.

Q. For what period of time, if any, have you served on its Board of Directors?

A. I held no office in the Association until I was elected president. Then I served, of course, for two years on the Board as president and, if I am not mistaken, I think the retiring president is an ex officio member the following year.

Q. Has Mr. Lunsford ever held office in the Association?

A. He was president of the Association.

Q. When was he president, just speaking roughly?

A. Oh, I would venture the guess that it was probably about 1906 or 1908, or somewhere in there, but I don't know correctly.

Q. In this case an assault is being made by the plaintiffs upon the constitutionality of a certain Act originally known as House Bill 151, and which became effective June 21, 1938, and which purports to amend Sections 4222 and 4226 (a) and other sections of the Code and create certain new sections, and to repeal Section 168 of the Tax Code. Are you in general familiar with that Act so that my description of it enables you to know what I am speaking of?

[fol. 905] A. I am very familiar with House Bill 151. I can't say that I am with these sections as you recite them.

Q. Did you have any hand in getting that law passed by the Legislature?

A. No, sir. To the contrary, we were opposed to the bill and tried to get it amended before passing.

Q. May I ask, if Lunsford & Sons agency is faced with the choice of remaining a member of this Association and complying with this resolution, or of getting out of the Association, what will be its decision?

A. We opposed House Bill 151 for reasons as I have stated. Since its passage and its being enacted in the law, our office has fully complied with all its conditions. As I understand it now, the resolution is purely and simply a resolution of the State Association.

Q. That is correct.

A. It is not a law; therefore, I do not see how we would be bound by the resolution of the State Association. If it becomes a law, with our being opposed to the resolution, then we will either comply with the law and adhere to it, or we will resign from the State Association.

Q. You do not plan to comply with it until and unless it becomes a law?

A. We are going to comply with all the laws of the State of Virginia. If it comes to the point where we can't still remain a member of the Association and disagree with its enacted policies, then I guess it would be better for us to get out.

[fol. 906] Q. I hand you a copy of the resolution and would be glad for you to state your views about that as to the law and the resolution.

A. I think that when it comes to the point that you are deprived of making a contract with a licensed non-resident broker who is qualified to transact business in the State, that that is a prerogative of adjustment of division of commission that in no wise affects the public and should be on a

mutual, reciprocal agreement between the non-resident licensed broker and the agent. In other words, we fell that we should be compensated in proportion to the service that we render. If a controlling licensed broker out of the State does all the work to properly insure an individual or a corporation or otherwise in the State, and we merely make it legal by the countersignature, in accordance with the law, that what we should charge as a countersignature fee should be left between the broker and the agent countersigning, as long as the public is not being affected by any such division.

In regard to the resolution passed by the State Association, as we see it, the licensed non-resident broker, to a certain extent, relinquishes his control over the business in the State and the agent of the State is then made co-broker with him in the handling of the business. If I read the resolution correctly, we are charged with the responsibility of first approving the contract of insurance and its rating applicable before countersigning. The State of Virginia conducts the Virginia Insurance Rating Bureau through which copies of all policies are filed, and it is their duty [fol. 907] to see that all forms of insurance are proper and in accordance with the rules and regulations, both as to form of cover and of rates. I do not think it is the intention of any agent to wilfully try to issue a policy contrary to the rules, but with the many changes coming into our business it is necessary to have somebody supervise, to take care of normal errors and mistakes that might occur. We recognize, whether he be an agent in the State or a broker out of the State who is licensed, that the business which is the subject of insurance is the property and the business of the controlling broker or agent. We think that his form should be countersigned and sent to the Virginia Insurance Rating Bureau where, if it is approved, all well and good. If it is violated for any reason whatsoever, it is then incumbent upon the agent in the State to so notify the controlling broker of the violations and ask for their immediate correction.

I do not feel that any agent, whether countersigning agent of business controlled out of the State or business placed between agents within the State, gives any permission for an agent within the State to contact in any way the assured whose business you control. If I control business in the City of Richmond, I would naturally send it to a Richmond agent

to be issued—for the issuance of the policy—and I think, by the same token, that all of the agents in Richmond would likewise send any business providing insurance coverage in Roanoke to a Roanoke agent for execution. I feel that there is a barrier that does not permit the agent in Richmond to in anywise contact my assured, or, by the same [fol. 908] token, for any agent in Roanoke to contact the assured of the Richmond agent. This is his business, he controls it, and whether it is written correctly or incorrectly, as long as it complies with the laws of the State, I think that is the sole privilege and prerogative of the controlling agent.

If I may state my personal views, which I have done on numerous occasions to officers and directors of the State Association, I think that the two inclusions in House Bill 151 which I previously stated, where it will in anywise affect the public as to cost of coverage, it will be the medium of the losing of more business to the agents of the Association who represent old line stock companies than any rule, resolution, or law that has been passed. Necessarily, with all the concrete, definite restrictions on business, that is all lost, that has gone to other carriers, and the stock agencies who are members of the Association will lose this business for themselves and their companies. I would like to again reiterate that this whole subjectmatter in no wise affected the insuring public as to its ultimate cost or its protection. It is solely a matter of the division of a small commission between one who is supposed to have sold and gotten the business and an agent in a locality where the subjectmatter at risk is located.

Cross-examination.

By Mr. Staples:

Q. Mr. Izard, during the last ten years, we will say, has your office done any substantial amount of countersigning for non-resident brokers or agents or of business sent to [fol. 909] you direct by the insurance companies, casualty and surety?

A. We have done both, sir.

Q. About what volume has your business been along that line?

A. We have got a large brokerage office. I would not

know what percentage was direct business and what was brokerage business.

Q. I believe both you and Mr. Lunsford, and particularly Mr. Lunsford, have spent, during a long period of years, a great deal of time in New York and other large cities, building up this brokerage business?

A. We try to get it wherever we can, sir.

Q. And you have been quite successful, have you not?

A. Well, we are pretty well satisfied.

Q. What has been the nature of your agreements with these brokers as to the compensation you would charge for countersigning these policies?

A. I say, the law has practically made no change at all with the business that we had already written.

Q. In other words, it has been the practice to divide the commissions on a fifty per cent basis, has it not?

A. No, sir, not unless—it all depends upon the amount of work that you put into the servicing of the risk at the request of the broker.

Q. And it was left to the broker to determine that question, was it?

[fol. 910] A. No, sir; it was a mutual agreement between the broker and our office, if you want to use that as an illustration, as to what the compensation was on a fair and equitable basis for services that were rendered.

Q. Well, what has been the general run of the division of commissions?

A. It varies somewhat. I think some of the localities in the State have local board rules.

Q. I mean with reference to your business?

A. It would be on about a fifty-fifty basis on the fire business, and on the casualty and surety business it would be on a less basis.

Q. How much less?

A. From ten to fifteen per cent less.

Q. In other words, from thirty-five to forty per cent has been the average amount you have gotten for countersigning casualty and surety policies?

A. No, sir. The commissions are not that high.

Q. What I mean is, of the total producer's commission. What percentage of the total producer's commission has it been customary for your office to receive on these casualty and surety contracts which you have countersigned at the request of these non-resident brokers?

Q. The words "producer's commission" refer to the commission of the ordinary resident agent, and do not include the over-riding commission of a general agent or a regional agent.

[fol. 911] A. We have countersigned policies in our office without any division of commission whatsoever, having done so because of purely and simply a matter of courtesy for either a friendly agent or broker. In either case, where we had, at the request of the controlling agent or broker, rendered some service, we have retained fifty percent of the commission.

I am still talking about just the local agent's commission. As I understand, that is what we are talking about all together. The general agent, I mean, is out of the thing. Since the passage of the law, countersignatures and executions have been in full accordance with the law.

Q. In other words, you have retained fifty percent of the commissions on all countersigning done by your office since June 21, 1938?

A. Since the law went into effect, yes, sir.

Q. You said that in some cases you signed as a matter of courtesy, but where service was to be rendered, you charged fifty percent. Are there any intermediate stages between there where you charged a different rate than either of those? In other words, have there been cases in which you charged part of the commission but charged less than fifty percent of the commission?

A. Prior to the passage of the law, yes, sir.

Q. Have you ever countersigned them where no charge at all was made?

A. No, sir.

Q. Have you countersigned them in which your charge was ten percent?

[fol. 912] A. Yes, sir.

Q. And fifteen percent?

A. I don't think we ever got fifteen.

Q. Ten percent was the most you ever got for countersigning policies where the business was sent to you from New York?

A. We do not consider it as countersigning. We are the executing agent and prepare the policies for the broker. There is a difference between the executing agent and the countersignature.

Q. Do you mean that you acted as the executing agent and still got only ten percent?

A. Exactly—prior to the law.

Q. You say it has been customary for your office to countersign policies for these New York brokers and charge only ten percent, even though you prepare the policy in your office?

A. That is correct.

Q. Do you feel it incumbent on you, or does your office feel it incumbent on it, to render any substantial service in a case of that kind?

A. If we were requested to, we do.

Q. You rendered no such service except such as was requested by whom?

A. By the controlling broker.

Q. Suppose the assured should request service?

A. We would refer to the broker immediately as the controlling broker of the business.

[fol. 913] Q. In other words, you do not recognize the propriety of the passage of this law. The Virginia agent has no right at all to this business, and such as he received was merely a business courtesy or compensation volunteered on the part of the New York broker; that is true, isn't it?

A. As long as the New York broker placed business with our office, we would notify him, whether as a matter of ethics or whatnot, but we would in no wise contact that assured relative to his insurance unless requested to do so by the broker.

Q. You recognized that that broker was the owner of that business; is that correct?

A. Yes, sir.

Q. And whatever he said went about any matter relating to that policy?

A. As long as it was in accordance with the approval of the Virginia Bureau, it did.

Q. I do not mean he could ask you to violate the law, but I mean, any question that came up as to any service you should render or what you should do in connection with the policy or contract, was left in the discretion of that broker and in his control, you say, or am I correct in that?

A. He controlled the business and we serviced the risk at his request or his direction. We made no immediate contact with the assured in any way or fashion unless specifically requested to do so by the broker.

Q. In cases in which you received fifty percent of the commission, was it customary for you to render some service in that connection?

[fol. 914] A. None other than what we had previously done at the request of the broker.

Q. He usually requested more in those cases, didn't he?

A. In some cases he requested more, and we did more.

Q. Your office does render a lot of service to its clients, doesn't it?

A. We render it to the broker.

Q. I am talking about any business that you write, yourselves.

A. We try to render them as good service as they can possibly obtain.

Q. That is an incentive to retain the business, isn't it?

A. That is about the only one, I guess, except friendship.

Q. If a broker should place business with you on a fifty percent basis and ask you to render to the assured, who lives in your town or vicinity, the same service that you would render to your own client, would you do that, or would you not?

A. We would do so at his request and through him, always recognizing him to convey the information that he had requested, or the service that he had requested, in turn, back to his assured, not to us.

Q. But if he asked you to render the same service to that risk that you would render if you had written it yourself, you would do that without consulting him any further, wouldn't you?

[fol. 915] A. If he asked *is* to contact the assured and render the same service that we would do for our own client, we would do so.

Q. If the effect of this statute (I am assuming this for the purpose of the question) is to base in the Virginia resident agent a fifty percent ownership of any Virginia coverage business originating out of this State, then, do you think it unreasonable for the Virginia agent, if that construction of the law is correct, to render such service in connection with that as he would render to his own client that he had originated the business for himself?

A. I think that the person who sells the insurance and contacts the insurance controls the business. It is not changed at all by this reservation, that we will render any

more service to the broker than we have done heretofore. We will, any of us, service any risk at the specific request of the broker, always recognizing him as controlling the business.

Q. Well, what reason have you for not accepting the fifty percent, then?

A. The reason I do not think the fifty percent is right is because I think that we should be paid and remunerated on the basis of the amount of work and service that we render. I would like to make as much money in the insurance business as anybody else gets. Funny as it might sound, I don't want anybody to pay me an exorbitant commission when I have done nothing more than write my name three or six times by countersigning a policy which I had no control over, no knowledge of, or nothing other than to [fol. 916] make it comply with the law of Virginia. If I may use an illustration, I would be glad to cite you one case that I have.

Q. Go ahead.

A. We had a bridge to be built in the City of Roanoke, known as the Wasena Bridge. The bids were advertised and anybody in the United States that wanted to could bid on the construction of that bridge. The bond business is entirely different from contracts of insurance, and if you are going to obligate your company for a contractual obligation involving hundreds of thousands of dollars, naturally you have to have intimate contact and knowledge of the assured whom you are guaranteeing to that amount. It turned out that the Bridge was let in two parts. The substructure or the foundation and piers, as we call it, was awarded to Mr. M. S. Hudgins, of Roanoke, Virginia, he being one of our clients. The superstructure, as we call it, which is the steel, was awarded to the Wisconsin Bridge Company. The Wisconsin Bridge Company were awarded the contract and they executed bond in the United States Guarantee Company, whom we represented. The bond was sent to our office to be countersigned and executed in accordance with the present existing law. We immediately found out that the controlling broker was not a licensed resident broker of the State of Virginia. We immediately notified the United States Guarantee Company that we would be unable to allow him any commission whatsoever, in view of his not being licensed, and that we would have to consider the same as business of our office unless he

[fol. 917] qualified and obtained a license as a non-resident broker in accordance with the law before the contract was awarded; if he did this, we would make a division of commission in accordance with the law—which we still feel was excessive for our rendering no service, but, be that as it may, we would have no option whatsoever but to charge him fifty percent commission. If he did not qualify as a non-resident licensed broker, we would charge the full commission that we would, the same as if he has been one of our clients.

I do not think that we would be entitled to the full commission on that bond when we rendered no service, knew nothing of the financial standing of the Wisconsin Bridge Company. We could not obligate them to a contract bond involving $150,000, because of no knowledge, but, nevertheless, we would be necessitated to retain full commission on business on which we had not rendered any outstanding service. Just because the bridge happened to be in the City of Roanoke and the bridge that I cross daily, I do not feel, entitled me to the insurance commission on it, when all bidders had a fair and equal chance to secure the contract. We had concerns operating throughout the 48 states. It is not necessary that they make their bond connections with the company that can't serve them in all 48 States, and a local agent is not qualified, unless he is domiciled in the home office of that company, to properly service it, in my opinion.

Q. Did you lose that business?

A. No, sir, we countersigned it.

Q. And got all of the commission?

[fol. 918] A. No, sir. He qualified as a non-resident broker and we got fifty-percent commission for writing our name six times.

Q. You would not hold yourself responsible to render any service in that case, if you were called on in the event of a claim or anything of that kind, would you?

A. If we could render service, I think so, but I do not think that we rendered service commensurate with the return that we got and, funny as it might sound, I do not think we earned the money, I do not think we are entitled to it.

Q. Suppose there is a loss in that case and there is a whole lot of work and they call on you to do it?

A. They would never go to a local agent to straighten out a loss on a bond.

Q. How do you know they would not?

A. I have never heard of them straightening out a big bridge contract loss. They generally call on the attorneys because of the litigation involved.

Q. Suppose they did not get into litigation?

A. Well, it would not be much of a claim where you just turned the loss over to the local agent and he adjusted it.

Q. It might not be a large claim or involve a lot of work to get it settled.

A. As a general rule, bond claims are large or not at all.

Q. Suppose there were some claim against the contractor and they asserted a claim against the bonding company in connection with that, and the bonding company was anxious [fol. 919] to get the claim settled and not have any suit about it, or maybe a small suit, and they requested your advice in the matter; wouldn't you feel it was incumbent on you to render that?

A. We would feel there was an obligation on us to render it, but, in the first place, I do not think a local agent is qualified to do that. I say that with reservation, with all of them here present. But if it was a bond loss, we would refer it to our company attorneys in Roanoke and it would be handled by them.

Q. You mean, you would not render any service?

A. No, we would render all we could.

Q. But you don't think you could render any to them?

A. Not on a big bond loss.

Q. You don't think you would be competent to render any service in connection with the bond even if the company called on you for it?

A. Yes, sir, I think we would be able to render service.

Q. What service could you render in connection with the bond?

A. Well, it would depend on what the specific service was.

Q. Do you mean there is no service at all on a bond of that kind?

A. A great deal of it.

Q. Don't you think that the scale of commissions allowed agents on bonds of that kind ought to be greatly reduced then?

[fol. 920] A. I don't think so, because I think it is the

most expensive form of business put on your books, but all of that service is rendered before the contract is awarded.

Q. Suppose the contractor had come directly to your office and said he wanted the bond written, and you had left it to the company to investigate the financial status of the contractor in his home place; would you feel that you were entitled to the premium?

A. If he came to us and asked us to write the bond; the first thing, we would ask for a financial statement. If he could give us a financial statement and was qualified as an officer of the company to give the financial statement which we could assume to be correct, we would immediately take it up with our bonding representative and tell him that we had a contract bond to execute for this concern on a basis of so much. You then have to find the amount of unfinished work he has on hand, the total amount of bond coverage that you would allow him over all, commensurate with the statement that he has presented. Then it would be up to the company that was going to write the bond to write us to execute that bond for him.

Q. What is the next thing you would do?

A. Find out as to his ability to do such a job.

Q. How would you find out?

A. Through any medium that was available, either through knowledge of other people in like work with business comparable to him, the amount of work that he had on hand, whether he completed that properly and efficiently, [fol. 921] whether he defaulted in anything, whether he had any uncompleted jobs, had compromised any jobs, and a general run of knowledge, so that you are as familiar with his business as you can possibly be to guarantee the contract involved of hundreds of thousands of dollars.

Q. Would you have that investigation made by the company, or do it yourself?

A. We do it ourselves, just as soon as we can—build it up to as great a degree of perfection as possible, and have the company add what they can add, which, in a great many cases, is more than we can get unless it is a concern that we are very familiar with.

Q. I understood you to say in the early part of your testimony about this bridge bond that there wasn't anything you could do about it, and now you say you would find out; which is correct?

A. No, sir—I am answering your first reference to my statement. I say, in this particular case that I refer to as the Wisconsin Bridge Case, that we knew absolutely nothing about that until after the letting. We do not as yet know a single individual connected with them. If they walked into our office tomorrow, we would not know a single one unless he introduced himself and told us who he was.

[fol. 922] Q. I understood you to say you had no way of knowing about him?

A. We knew nothing about the man until after the bids were received.

Q. Yet, even under those circumstances, you could have found out something about him when the contract was sent to you for countersignature, could you not?

A. We did endeavor to get in touch with him through mail, without going to Milwaukee, Wisconsin, and we heard absolutely nothing in reply.

Q. Then you went ahead and issued the bond anyway?

A. Under instructions from the United States Guarantee Company.

Q. And you did not do anything about finding out whether it was a proper bond to issue?

A. No, sir. They said to execute the bond and we executed it.

Q. And that was all that you did?

A. That was all, sir.

Q. Now, about these countersignatures that you have been making; what does your compensation average in connection with those contracts?

A. Fifty percent of whatever the commission is.

Q. I mean before this law was passed?

A. There has been practically no change.

[fol. 923] Q. In dollars and cents, what is the average amount you would get out of the countersigning of these contracts for these New York brokers on large risks?

A. I again come back to the question that we do not term it "countersignature", in that we execute the policies in our office.

Q. You countersign in your office?

A. We execute them.

Q. You mean surety or casualty companies?

A. All companies.

Q. Casualty, as well?

A. Yes, sir. We have to make application to the Depart-

ment of Insurance, and they will license us and send us a copy of the license designating us as agent for those companies. We then have authority from those companies relative to binding them or committing them on risks. The broker is not an agent for the company that he represents in our office. He obtains the business, sends it to our office, and we designate in what companies and how many of them the risk shall be divided. The policies are prepared with his form attached, at the proper rate and premium, we execute the policies under our authority with the company, and send them to the broker. As an illustration, an agent for the United States Guarantee Company could execute a bond or contract for that company but the same would not be valid unless countersigned by an agent for the same company in [fol. 924] the State of Virginia, in accordance with the law. The agent for the United States Guarantee Company would have to execute the contract or bond. It would then be sent to us merely for countersignature, which would make it valid under the law.

Q. I suppose you have both types of business come to you, do you not, or does all of your business in which you countersign contracts and policies consist of those which you prepare in the office yourself?

A. The usual practice is for our agency to execute, rather than countersign.

Q. In other words, you sign them under a power of attorney as agent and also countersign them as resident agent?

A. You don't have to countersign them if you are licensed to do business in the State.

Q. Are these contracts which you execute usually prepared in your office, or are they sent to you already prepared?

A. The policies are in blank, serially numbered, for which we are accountable. The form which gives you the coverage that you are committing the company to is either prepared by us, when it is direct business to our office, or is prepared by the controlling broker or agent when it is sent to us.

Q. Is the paper sent to you complete, attached to the printed form, or do you attach those to the printed form after they reach your office, when they come in from out of the State?

[fol. 925] A. I say, we have a stack of policies for all companies in serial numbers that we are charged with. We have to account for each one of those policies in succession

as we use them. If a risk comes to us from a licensed broker outside of the State to cover the Viscose Corporation, as an illustration, he will send us the prepared form from his office for coverage that he is affording under that contract. We accept his form, use it, complete the policy, send one copy to the Virginia Insurance Rating Bureau for their stamp of approval as to the proper form, proper coverage, and cost under the proper rate. If the same is in order, they then, in turn, forward it to the company with whom the business was placed.

Q. You say you complete the policy; do you paste this form that is sent into you by the non-resident broker on one of your regular blanks?

A. We use the blank policy, put the date and expiration and what it covers on the back of it, together with the name of the assured. The policies are written in triplicate, the original policy and what we call two daily reports. The policy is completed in one operation. Inside we put the amount of insurance at risk, the rate, and the premium. We put the name of the assured, the term, from March 8, 1939 to 1940, if it is one year, or three years, or whatever it may be, paste the form onto the policy and on each copy of the daily report, sign it Charles Lunsford & Sons by us [fol. 926] as agents, send the policy to the broker, send one copy of the form of coverage to the Virginia Insurance Rating Bureau, retaining one copy in our office.

Q. Does that have reference to fire policies, also?

A. That was fire policies I was speaking of.

Q. We are concerned principally in this case with casualty and surety contracts. What is your custom with reference to those?

A. The procedure would be practically the same, other than we send the daily reports One to the company itself here in Richmond, the other going to the Virginia Automobile Rating Bureau, who are supervising the casualty field of insurance.

Q. How long has that Bureau been in existence?

A. The Virginia Insurance Rating Bureau has been in existence as long as I have been in business. I think that the casualty bureau was only chartered about four or five years ago, but I don't remember correctly.

Q. Now, how about bonds that are sent to you for execution? Are they sent prepared, or do you prepare those

bonds or do anything except sign them, or what is your function in connection with those?

A. As a rule, a contract and the bond are all one; that is as a rule. There might be three or four different copies, but as a rule the contract and the bond are one and the same. We complete the bond as to the name of the assured [fol. 927] and the company that is obligating itself, and the amount, citing the work to be performed. It is then signed by the corporation, or an officer of the company and its secretary, which binds them as principal. We then execute it in behalf of the bonding company under the power of attorney we have and attach a copy of our power of attorney to the bond, showing that we have proper authority to execute it, together with the company seal that is placed on the bond.

Q. Now, this bridge bond that you have reference to: was that prepared in your office, or was it sent to you already prepared for your countersignature?

A. It was sent to us already prepared.

Q. That is frequently the case with matters that you get in your office from the companies, isn't it, or was this a very exceptional case?

A. This was an exceptional case. Of course, we try to control as much business as we can that is going to be written in the State. We don't always do that.

Q. Do you regard this work that you have just described as taking place in your office on business sent to you from outside the State as practically clerical work, or does it involve the exercise of any discretion or ability of any kind?

A. We have cases in our office where we have done as much work as if we controlled the business direct. We have other cases that come into our office where we do nothing more than countersign it and make it applicable [fol. 928] under the law. We have others where we do various degrees of work. All of the work, however, is done at the request of the controlling broker or the agent, and we would not consider for a moment volunteering to contact his assured——

Q. My question was addressed to whether or not all of this work which you do when a policy or a contract comes into your office and you take the contract and paste it on the blank form and mail a copy to the company and to the Insurance Rating Bureau, and whether that involves clerical

work or the exercise of the discretion or ability of an insurance man?

A. At times it involves nothing more than the mere clerical work of getting it out and looking it over after it has been prepared to see that the proper rate was used as given to you by the broker, that the form is signed, that the computation of the premium is correct, and carrying out the orders for the business that you have received.

Q. Then, you have been doing lots more than countersigning under past custom, have you not?

A. No, sir. We do not let a policy of insurance go out of our office—although we think our policywriting department is efficient—without that policy being reviewed by one of the members of the firm who signs that and every policy or contract that goes out.

Q. Do you think that is true of agents generally in the State, or do you think that you have a practice superior to the others?

[fol. 929] A. I can't speak for the other agents of the State, but I certainly do not think that our office is any more efficient or any more capable or does anything other than the average agent should do who conducts an insurance office properly.

Q. Well, you do not believe there is any reputable insurance agent—and by that I mean a commission resident agent—in the State who would treat a thing of that kind as a mere perfunctory matter and sign it as a matter of course without making some investigation, such as you have said your office makes of it, do you?

A No, sir. I do not.

Q. With reference to the fact that your office executes these contracts, is it necessary for the company or the broker to sent it to your office to have it executed, or could that be done just as well without sending it to your office, so far as the executing part is concerned, leaving out of consideration the countersigning?

A. It would have to be executed by an agent in the State.

Q. Well, do all the other agents in the State do the same thing you do with reference to contracts of casualty and surety and fire?

A. I think so.

Q. So, when you drew the distinction between executing and countersigning, it was nothing particularly distinctive of your office, but had reference to all the offices?

A. That is right.

[fol. 930] Q. What is the average compensation in dollars and cents which your office has received from out-of-State brokers on its countersigning business?

A. I would not even like to venture a guess.

Q. What is the smallest amount that you have received that you recall?

A. Well, it would run down less than a dollar.

Q. And what is the largest amount?

A. Well, we must not have gotten any big ones lately because there don't any come to my mind that are outstanding. Of course, if you get a premium that involves a risk of $3,000, you would get $300 commission; if you get one of $10,000, you would get $1,000 commission.

Q. I refer to the time before this 1938 Act was passed.

A. Well, our business has not fluctuated materially either one way or the other since the passage of the bill.

Q. The amount of commissions you have gotten on business you have countersigned for out-of-State brokers has changed, has it not, or the rate of commission has changed, has it not?

A. The rate has not changed appreciably affecting us, no.

Q. You think that on most of the business that has been coming in from out of the State you have been getting fifty percent, anyway?

A. The majority of it, yes, sir.

Q. Prior to the passage of the Act?

[fol. 931] A. Yes, sir.

Q. So, there is nothing unreasonable about that basis of division of fifty percent if it is to be the policy of the State that local agents shall be associated with non-resident brokers in Virginia coverage business? I say, if that is the policy, you would not say that the statutory basis for the division of commission is out of line with the general custom which has prevailed in your office on similar types of business where you have been voluntarily associated?

A. Regardless of whether it has affected the remuneration of our office for execution or countersignature, we think that they have taken away from us a prerogative that makes us retain fifty percent of the commission, when we think it is a privilege that we could exercise. If we have exercised it in the past, we think we have reason to do it and the broker has had reasons to do it, but whether we receive it or don't receive it in the future, we don't think we should

be required by law to state what percentage of commission we should receive, any more than any other business would do. It would be just as applicable, if I may state my opinion, if the medical profession or the legal profession would have a similar law that they would have to retain fifty per-cent of the fee of an associate lawyer or an associate doctor that left a case to them. I think it is a prerogative between the two interested parties.

A. I think that the division of commission should be decided upon by the controlling agent or broker of the business and the executing agent or countersigning agent.

[fol. 932] Q. I understand, Mr. Izard, that you are not in favor of the law and that you think that there ought not to be any legal requirement as to the method of division. My question is directed to the point that, assuming there is to be a law which fixes a basis of division as a matter of law, the basis which has been adopted is not out of line with the practice which has prevailed in your office.

A. It has not materially changed it.

Q. It is not out of line, then, with the general custom; is that correct?

A. Well, very little of our fees is merely countersignature or execution. We are asked by the broker in some cases to render services over and above that.

Q. Why do you suppose he asks you to do that?

A. I suppose it is due to the efficiency of my associates.

Q. But the ability of your associate has nothing to do with the necessity of having local service rendered, does it, if the broker living out of the State is able to render that service himself, and if there is not reason why there should be any local service rendered, he certainly is not in the habit of merely donating money to Mr. Lunsford, or operating an eleemosynary institution for his benefit, is he?

A. I don't think that all agents, either in the State of Virginia or in other States, have the same qualifications. I think that there are plenty of agencies in the State of [fol. 933] Virginia that are excellently qualified to serve any business in the State, and I think that the business of the broker is diverted to those many agencies who are qualified. There are conditions that are fast changing in the business, such as your rules and regulations, your change in your tariff or rates, and it is perfectly possible, and is a fact, I think, that the majority of agents operating in the 48 States probably do not keep in as close contact with the

changes in rate structures, deficiency eliminations, and so forth, as the competent agent in the State can advise him on, and it is a service he renders the broker. I do not think the agent should go to the assured on account of those rate changes or deficiency eliminations which reduce the rate, but he does render a service to the broker by calling those to his attention.

Q. You believe, then, do you not, that a good competent Virginia resident agent should be, as a matter of good practice, associated in all Virginia coverage contracts?

A. I think he should be associated, but the division of commissions should be between the two respective parties at interest.

Q. In other words, the only criticism you have to make of this law is, not because it requires the association of a Virginia resident agent with a non-resident broker, but because you think the law should not undertake to regulate the basis of the division?

A. That is correct.

Q. In other respects you have no complaint to make of the statute; is that true?

—. —.

[fol. 934] Q. Policies which originate in your own office are sent to the Automobil Rating Bureau, are they not?

A. Yes, sir.

Q. You do not regard that as a reason why you should not try to determine the correctness of the premium or any other matter relating to the policy before sending it there, do you?

A. We try to see it is correct before it goes, sir.

Q. Should not that same ruling apply to a countersigning agent, instead of his simply relying on the Insurance Rating Bureau to check up the correctness of the policy?

A. I don't think so, because that is an obligation imposed on the broker or agent who controls the business. We are merely acting in a perfunctory capacity in making the contract legal in this State in compliance with an enacted law.

Q. You think that the effect of the law is merely to make you do perfunctory acts and that you should not do anything more to earn the fifty percent which you receive than merely to countersign the policy. Is that the view you take of it?

A. I think that the acts can be perfunctory I think that the Act can require service, but think that this service should be rendered when and if asked for by the broker or controlling agent of the business.

Q. Your principal thought seems to be, Mr. Izard, that this statute which undertakes to regulate the business of insurance in the State so greatly impinges on your liberty to transact business with these New York brokers with whom [fol. 935] you have been dealing that it is in violation of your constitutional rights is that correct?

Q. I have always considered that any contracting parties should have some say-so in the contractual obligations or relations of each to the other.

Q. Mr. Izard, I believe you stated that you thought the effect of this law would be the losing of business by the insurance agents; is that correct?

A. I recall making that statement, because I personally think that it will increase the agency representation of mutual companies, which are direct competitors of ours, in view of the fact that this bill is not operative as far as the mutual companies are concerned.

Q. The fact that you do think it would lose business for your office is a very material fact, is it not, in your conclusion as to the wisdom of the law?

A. Nothing more, sir; than the normal loss of business that we sustain. I think it will increase competitors in the form of additional agents, as formerly stated, by there being more mutual agents, in view of the fact that the law does not apply to mutual companies.

Q. I believe you used that argument with the members of the agents association who were in favor of the passage of the law, did you not?

A. Yes, sir.

Q. And you were unable to convince them that your views were correct on that point?

[fol. 936] A. I was unable to convince them on any one of my three objections.

Q. Does your agency at Roanoke do any countersigning for the companies or non-resident brokers for business negotiated outside of Virginia, involving risks not located in Roanoke or Roanoke County or within fifteen or twenty miles of Roanoke?

A. I do not remember of countersigning a policy. We execute the policies that are sent to us.

Q. Well, we won't quibble about terms; you can use any term you desire. What I have reference to is this business sent to you outside of the State, either by a company you represent or by a non-resident broker.

A. We respect the locality of the company and the agent where the risk is, and I can cite you case after case where we have had clients move from Roanoke to the City of Richmond and we have immediately referred it to the agent for the company in Richmond, and gone even further and told them that on renewal he could take the business and solicit it and we would be very glad indeed for him to get it. I can show you from the records other similar business that has moved to our city and they still control it, either one of which, I think, is a matter of personal prerogative of agents.

Q. Do you have reference to fire insurance business, or casualty business, or both?

A. Business as a whole.

Q. Does that rule apply to casualty business, generally, respecting the rights of the local agent to business covering in his territory?

[fol. 937] A. I think it does with the majority of outstanding companies. I think they respect the territory of the agent.

Q. Do the companies you represent which are in the casualty and surety business respect your territorial rights as to business originating outside of Virginia?

A. I don't know whether they are imposing on me or not. As far as I know, they are respecting my territorial rights.

Q. It is your understanding, then, that the companies you represent recognize your right to be associated with and participate in any business covering in the territory in which you represent the companies; is that true? Is that your understanding of the practice of the companies you represent, or not?

A. As far as I personally know, my territorial rights, whatever they may be, are being observed by the companies that I represent, and I think it is a common practice for the companies to recognize the territorial rights of the agents as they are constituted.

Q. When you say "territorial rights", what do you mean by that?

A. As I understand them: I am a licensed agent in the State of Virginia and have the privilege of conducting busi-

ness and soliciting business anywhere in the State of Virginia. I do not think that the Insurance Department confines me to any county or where I shall solicit business. Now, the companies may have certain territorial limitations where they won't permit me to solicit business, in order to protect their other agent in that locality, and unless I [fol. 938] could refer to my contracts with my companies, I would not say exactly where my territorial rights are.

Q. I did not have reference to where your contract is, but to what rights you have within your territory. When this subject began, you spoke of having recognized the territorial rights of agents in Richmond to handle the business of persons moving from Roanoke to Richmond, and stated that you had recognized the rights of those agents to handle the business coming within their territory. You subsequently stated that you thought all reputable casualty companies respected the territorial rights of their agents. I assumed you were referring to the same sort of rights that you had reference to in your previous answers. Now, if you did not have reference to the right to participate in business inside of the territory of the agent, I am simply asking you what rights you did refer to when you used that expression?

A. I do not think that any of the outstanding companies would have an agent in Roanoke solicit individual business confined in the City of Richmond and ignore the rights of the Richmond agent. I do not think that the companies would ignore the rights of a Roanoke agent and permit the Richmond agent to write it in Roanoke unless they sent it to a qualified agent for the company who wrote it for the Richmond agent's account, or the Richmond agent who sent it for the Roanoke company's account. That was what I meant by respecting the rights of the localities.

Q. In other words, you mean that the reputable companies would not permit an agent in Richmond to write a [fol. 939] risk covering in your territory, in Roanoke?

A. Domiciled in Roanoke, unless it had the approval of their agent in Roanoke who would, no doubt, be glad to give his consent.

Q. That is your idea of a right that you have as regards intrastate business, is it?

A. That is correct, plus the rulings of the various local boards of communities who set up their own rights as to what can be written in that community and what cannot.

Q. Do you have reference to fire or casualty business?

A. Any form of business, I think, it is applicable to.

Q. Then, as I understand that, you consider that you have the right, and the exclusive right, insofar as intrastate business is concerned, to write Roanoke risks; am I correct or not in my interpretation of your answer?

A. I think that the Insurance Department has licensed me to solicit anywhere in the State of Virginia, and I think the rules, practices, and regulations restrict that broad right and I would have to be governed by each case as it came up. I think they have a local board ruling that any business that covers in Richmond has to be written through their local board at a brokerage commission or reciprocal commission, or anything you want.

Q. Do you think that applies to the casualty business?

A. As far as I know.

Q. Restricting this question, then, to Roanoke, if a Richmond agent representing a casualty insurance com-[fol. 940] pany wrote a Roanoke risk, would the Roanoke agent who happened to represent the company writing the risk feel that their rights were violated insofar as their relations with their respective companies were concerned?

A. We do not have a local board in Roanoke similar to the one in Richmond, that covers the same situation, and I will state into the record that I am sorry that we do not. We would only feel that the company who would permit it had overlooked an act of courtesy that they could have given us, but that would be a matter between the company and the agent in Richmond as to whether they wanted him to

Q. Do you understand it to be the custom in Virginia that the local agent is entitled to participate in risks covering in his territory?

A. I again state that, as I understand it, there is no commission arrangement compulsory between agents within the State. If such is the case, an agent could write in any territory and receive the full commission, as far as his license with the State is concerned, but he has other obligations, such as respect of territory, which, however, are a matter of policy between the agent and the company involved. I do not know what the territorial rights of the companies operating in the State are.

Q. Are you familiar with the territorial rights, if any,

of agents are as to companies they represent (I refer to casualty companies), insofar as their territories are concerned?

[fol. 941] A. I know that if you write in a territory where you are not qualified to write, they will call your attention to it very promptly.

Q. Do you mean that the company restricts the territory within which you can write?

A. Yes. I think there are certain parts as to where you shall write or where you cannot.

Q. Have you any restriction in your territory that you cannot write for the Fidelity & Casualty Company?

A. We try to write all over the State of Virginia, wherever we can.

Q. So that you would know whether you were "treading on anybody's toes" if you wrote a Richmond risk?

A. If I wrote an individual risk, such as your automobile in Richmond, I would write the agent of the company I put it in and ask if it would be all right to write it. If you want to give me the policy, and not the agent here, where is he being deprived of any privilege or anything at all in having me write it? But I think he is entitled to the courtesy and he should be permitted to acquiesce as to whether I should write it or not.

Q. Is that the custom followed by your office and the larger offices writing casualty risks in Roanoke?

A. I can only speak for my own office, and we treat that as such where it is a definite located risk.

Q. Coming then to business negotiated outside of the State, in these companies that you represent, where the risk is a Roanoke risk, would you feel that the company had [fol. 942] treated you right if they permitted a New York broker to write that business and did not associate you with it at all?

A. If the New York broker can control a risk in my city that I cannot control, either from inability or otherwise, then I do not see where any right has been taken away from me if, through his ability, he can come in and write it. I still think that it should be countersigned in the State of Virginia, but that the commission should be on a reciprocal basis between the broker and the agent.

Q. What would you think about the broker for his not giving you any fee?

A. If I consented to write it for nothing, I think that would be perfectly all right, sir.

Q. Suppose you did not have anything to do with it? How about the company men signing it?

A. What about it?

Q. Where would you come in on any commission on that?

A. I don't reckon I would come in on any commission at all.

Q. Then, you think it ought to be countersigned by a resident agent, do you?

A. Yes, sir.

Q. And you do not think that the company representative should be permitted to furnish the only countersignature necessary?

A. No, sir. That is direct for you.

By Mr. Christian:

Q. You side with him in one part of this case, don't you? [fol. 943] A. I can't help it. I am up here in the interest of the business in the State of Virginia, and I have been cross-examined and criticized. I am big enough and old enough to take it, but I think a big injustice has been done my own agency by it, and I think the agents are always being done an injustice, but I answer that question no because I don't think they are any better than we are. I am not holding any brief for anybody except to see that the business is conducted properly.

Q. Upon what principle do you distinguish your rights, or so-called rights to have some say in business involving a [fol. 944] Roanoke risk, negotiated by a Richmond agent covering in Roanoke, and a case where that risk is negotiated by a New York broker covering in Roanoke? I understood you to say that if a Richmond agent negotiated and wrote a Roanoke risk and your company that you represent permitted that to be done without consulting you that you would feel the company had slighted you, to say the least?

A. Discourteous. That is a good word.

Q. What is that discourtesy based on? Why do you think it would be discourteous?

A. I do not know whether I am correct as a matter of contract, but whether I am or not, I think we should all recognize the larger communities and respect the agent that represents that company in that community. I think if the

agent in Richmond wrote the business in Roanoke—and I can refer to my record as to any number of policies that we write for the agents in Richmond—they allow us ten percent commission. If they requested us we would no doubt write it for nothing as a matter of courtesy but I think it should be a matter to decide between us and the agent as to what compensation we should receive for permitting them to write a risk in Roanoke that they own and control.

Q. You do feel, however, regardless of whether the risk is negiotiated in New York or whether the risk is negotiated in Richmond, if a Roanoke coverage is involved a Roanoke local agent should participate in some manner in that business, do you not?

[fol. 945] A. No, sir. I would like to clarify that, if I can. I think that he should participate in it if he wanted to and I think it should be his prerogative exclusively as to whether he should participate and, if so, to what degree he should participate.

Q. You think then that he should have the right to participate in it if he desires to do so?

A. He should have knowledge of it and have the right if he wanted to.

Q. The choice here is whether the New York broker shall be made to recognize the rights of the Virginia agent on Virginia coverage or whether he shall have the right to ignore the Virginia agent and receive all of the producer's commissions. What would you say as between those two alternatives?

A. I think that the agents and the companies operating in the State of Virginia will both lose the business, or a large portion of it, because I think it will go to what we term non-admitted companies or what we term non-Association companies or to the mutuals. What rights the Virginia agents have, purely and simply because the business is in their locality and they can't control it, I think would be easily rectified by coming back to your reciprocal countersignature law that I have always advocated and let the person who countersigns it in accordance with the state law say what he shall charge for the countersignature, be it nothing, five percent, ten percent or twenty percent.

[fol. 946] Q. Mr. Adair has testified in this case that practically all of the countersigning done in Virginia by his company has been done through his office without the payment

of any commission to anybody. What do you think of that practice?

A. I do not consider that because a risk is going to be built in the City of Roanoke, such as the Wasena Bridge that I referred to, that gives me the all-exclusive privilege of participating in the commission on that bridge because it is in the confines of the City of Roanoke. If I could have controlled the business I would have done so. I exerted every effort that I could to do so. If any agent in the City of Richmond, Norfolk, or anywhere else, could have controlled it, he would have done so. If the agent in Virginia had controlled it I don't think I would have been entitled — a penny's worth of commission, I wouldn't have gotten a penny's worth of commission, I would never have known who had written it unless I had gone to the State Highway Department and seen who countersigned the bond. So it is a question of whether you are going to enrich your own coffers. I don't see where it makes any difference at all. I think the business should be countersigned and I hate to keep reiterating the same thing but I think it should be reciprocal and not say you have got to charge somebody so much, and so forth.

Q. I was just calling your attention to the practice which had been followed by one of the companies that you represent under this reciprocal rule which you are advocating and which they have ignored almost entirely and I ask you to [fol. 947] state whether or not that is in conformity with your former statements in this case that you think the resident agent has some rights in this regard which should be respected and if you are in accord with that practice or if that is what you call reciprocating?

A. If the company which you have stated has done such a thing, I do not believe for a moment that I have been deprived of a nickel's worth of commission that I was rightly entitled to. Where the business covered and whose territorial rights it was, I don't think anybody could say unless you saw the coverage and knew where it was and knew where it was domiciled. Just because it is in the State of Virginia—if you are going to have all agents in the state fighting for that commission because it is at Norfolk or Richmond or Roanoke or Bristol or where, then how in the world are you going to say who is going to get the commission and who is not. I come back to the point that if they all tried to obtain just as much business as we legitimately

and properly can, then I don't think we have got much kick coming to us for occasionally having a policy countersigned in the state.

Q. When why do you think the local resident agent should be required to countersign it?

A. It is nothing more than to know what business is coming into the state.

Q. Is that the only reason?

A. I said I think he should be cognizant of the risk it is covering and then if he wanted to make any request for commission that is up to him. He could waive it, ask for it or do whatever he wanted to do.

[fol. 948] Q. Then, so far as you are concerned, if the company simply wrote you a letter and said "We have written a risk in your territory through a New York broker and have paid to him all the commissions," that is all that you think ought to be done, isn't it?

A. No, you can't do that under the new law.

Q. I am talking about the old law, the reciprocal law that you favor?

A. If he advises us that he has written it and asks us if it is all right.

Q. Suppose it is not all right?

A. Then you could make them cancel the policy. I don't reckon you could legally but if you were a pretty good agent of theirs I expect they would acquiesce in your request.

Q. Your idea is that under the present practice of the Fidelity & Casualty Company, where you have no knowledge of this risk being written, you don't get a chance to request them not to write it without your participation but if you have to countersign it then you would have an opportunity to make such demands as you thought were proper? Do I understand you correctly?

A. I would like to cite as an illustration that the Fidelity & Casualty Company wrote a bond on a contractor at Franklin, Virginia, on a risk that covered down at Troutville, Virginia. Would we have any right to ask the Fidelity & Casualty Company to give us a commission on that?

Q. I understood you to say sometime ago that you thought you did have that right or you felt you would be slighted if they did it without consulting you.

[fol. 949] A. I said I thought it would be a discourteous act if they wrote a risk for a broker out of the state in my

vicinity somewhere and did not say something to me about it.

Q. You said the same thing also in reference to one inside the state, didn't you, about a Richmond man?

A. I said if a Richmond man came into Roanoke and wrote that, I think he should say something about it or the company should say something about it. If the Richmond agent writes at Troutville I don't see why in the world I control Troutville any more than the Richmond agent does. It is a little hole in the wall down there twenty miles from Roanoke. I certainly don't have any lock on it as I see. I don't see why any of these Richmond agents couldn't write it just the same as I could.

Q. You think that any agent who can get the business is entitled to it; is that right?

A. With the respect and customs that we have been living under.

Q. Do you think the non-resident broker has any more right, or should have as a matter of justice, to monopolize risk in your territory, written by the company that you represent, than a Richmond agent would have to that particular risk?

A. A risk in my town, using that as your illustration, would consist merely of the employees, the plant manager and the operators. They never place the business. If the headquarters, the president and executive officers and those who have the pulse of the business are in Richmond, then [fol. 950] I think by all means the Richmond agent would control the business. If the business was in New York, the plant still in Roanoke, then I think it is perfectly natural and it is a condition is going to exist as long as all of us are here—it is hard to say, but they are going to be in New York where the power is and where the money is and that is where the business is going to be directed.

Q. You say you think that is right unfortunate?

A. I would much rather have them in Roanoke if I could, the head man, and then I could go to them.

Q. You think it is unfortunate that they are in New York?

A. From a personal standpoint I do, yes, sir.

Q. The president of the company is in New York but all the business is done in Virginia, but on account of being a friend of that New York President he gets the business and you think that is proper that he should, do you?

A. I have an equal right to go to New York in an endeavor to get that business. You will get a courteous reception and, if you have the ability and can show some reason why you are entitled to the business, I think you will get it. If you don't have anything, then I think it will remain on a friendship basis between the New York broker and the President who is in New York and I don't think this law or any other law will ever change it to the contrary.

Q. Then if that is true, Mr. Izard, I am not clear in my [fol. 951] understanding of why you *you* think the law should require a resident agent to countersign the policy and give him the right to say whether, if the company writes the policy there, he should participate in it?

A. I would say that as a matter of custom and courtesy but a prerogative that he did not have to exercise unless he wanted to on account of him looking at it the same way you do or his fear that if he didn't he might take some of your business away from you.

Q. If it is a fact that you think the resident agent should have some say in that matter and you merely had a statute on the book that some person who is licensed as a resident agent must countersign the policy and there be no requirement that he shall retain any particular part of the commission, can't you see that a company that desires to evade that statute can employ one person in the state, or a dozen companies could employ one person in the state, have him licensed as a resident agent, let him countersign all of the policies, and completely nullify the purpose of the statute, or do you think that that is true?

A. I think if our business has reached that point where the outstanding companies would conduct their business on that basis, then I think it is a deplorable situation and one that the law will still not remedy.

Q. Why would you think it would be any more deplorable for a salaried officer to sign or countersign these contracts [fol. 952] than it would be to have a man licensed as a resident agent, living in the City of Richmond, who for compensation, say, of twenty-five cents or a dollar or five dollars would countersign all contracts which the company he represents, or the various companies which he might represent, requested him to countersign?

A. If that premium income which you have recited came out of risks located exclusive of any of the main cities in Virginia, then whose territory or whose right was affected

by the companies writing in that territory? I will not attempt to answer. If the risk involved, we will say, the Standard Oil fleet of New York, which I certainly could never control, and they operate one or two trucks in Roanoke, I can't, for the life of me, see why I should receive any commission whatsoever on the insurance on two of the Standard Oil Company's trucks operating in Roanoke when they are operating in forty-eight states of the Union and no telling how many cities of the Union. For that reason I couldn't say whether they had infringed on anybody's territory, had deprived anybody of the opportunity of doing that business or whether anyone had been hurt by that countersignature.

Q. The question I asked you was whether it would be any more deplorable for them to employ one resident agent to do all the countersigning than for them to have it done by their salaried officers?

A. I replied to that once before that I did not believe that the Fidelity & Casualty Company of New York would [fol. 953] resort to any such method of countersignature to comply with the law.

Q. I still ask you whether, in your opinion, it would be any more deplorable to have a resident agent employed for that purpose and licensed for that purpose, without paying him any commissions, than it would be to have a salaried man do it?

A. When I don't think there is a possibility of something existing and until I do know that something exists, I don't see why my views would be of any consequence on it.

Q. Suppose the company is not such a reputable company as you refer to. Maybe some agents are not so fortunate as you are to represent the most reputable companies. What about a company that would descend to such reprehensible tactics as to have the countersigning done by a resident agent without paying him any commission and pay him a mere nominal consideration for it?

A. In the first place, there are plenty of reputable companies and the facilities are available for any reputable agent that wants them. If there are not, and they don't want such representation, then I don't think that this law will correct it. You have got to be inwardly right and conduct yourself accordingly; otherwise I have never seen any law that will make a man change.

Q. Does it protect the resident agent in his locality as to business written in that locality?

A. I don't think so, sir. I think if an agent in Richmond wanted to countersign a policy in Roanoke for any company it would be a valid contract in Virginia and I don't see where [fol. 954] anything other than custom and respect would have been hurt.

Q. I was talking about, where he gets half of the commission. Whether they would follow a practice of that kind is, of course, a matter of conjecture but all of the Branch Managers have testified that in their opinion if the companies are required to pay a Virginia agent fifty percent of the commission they would pay that to the particular agent in the territory where the risk is involved but if you want to look at it from a broader scope, I will say from that standpoint, if you say that a Richmond agent represents the whole state, then it still would be within his territory, wouldn't it?

A. Unless the company felt that he was outside of his territory by going into one of the other cities and that is a matter of territorial agreement between the company and the agent. There are some agents in the state no doubt that can operate all over the whole state, in every city of the state. I venture that assertion. I don't know that that is correct.

Q. The company naturally wouldn't have an agent countersign unless it was within his territory, would they?

A. I don't think that my company would permit me to write a policy in some territory that I didn't have a right to write it in without the agent in that territory acquiescing in it.

Q. The question that I asked you was whether or not if the companies paid fifty percent of the commission on Virginia risks to a Virginia agent, authorized to write that [fol. 955] risk, or if this agent retains fifty percent of the commissions payable to the producer, whether that would operate to protect him in his territory insofar as participating in that business is concerned?

A. I think that he should have the privilege of making a contract with the producer as to what he should have for his services and just because it is in a community and the agent doesn't do anything, then I do not think he is entitled to fifty percent of the commission when the producer has done all the work and serviced the whole thing and you haven't done a thing.

Q. These cases in which you have charged ten percent or more you don't think you were entitled to as a matter of justice?

A. I do not, sir.

Q. And that you ought not to have done it?

A. I had to do it. The law says I must do it.

Q. I am talking about before there was any law on this subject?

A. I made such arrangement as I wanted to.

Q. But you wouldn't really be entitled to anything except a nominal amount for countersigning?

A. Absolutely, very, very, nominal.

Q. And that is all you ever got, wasn't it?

A. Absolutely unless we serviced it. If we serviced it at the request of the broker, then we have been compensated in comparison with the amount of work that we put into it [fol. 956] and the broker has appreciated it and remunerated us accordingly.

Q. I can understand, Mr. Izard, while an agency like yours which has built up a big brokerage connection in New York and has a large business of this kind, might feel that this statute might be hurtful to them in that it would probably require a distribution of the business around over the state or in some other manner. What about the interests of an agent who doesn't have that kind of business like you do and doesn't have any outside brokerage connections? What would you say as to how he would feel or how you would probably feel if you saw the cream of the business in your particular locality going to some man outside and you were not allowed to have any participation in it or any say-so about it?

—. We are a very small agency in Southwest Virginia, just about as far from the hub of the state of Virginia as you could get. The hub of business is centered in Richmond and that applies to the insurance business likewise. What volume of brokerage business we have depends upon what your interpretation of the word "large" is. "Large" can mean a lot of things but until you apply it comparable to something *else*, you don't know what the size of it is. Therefore, if the law remains as it is, as far as our business being affected one way or the other, and any agent in the state being affected one way or the other by increased remuneration, I do not think it will help anybody and I reiterate that I think it will be detrimental to all of us because a lot of the business

will go to non-admitted companies, non-Association companies and mutual companies.

[fol. 957] Q. You can see, can't you, Mr. Izard, that there is a very wide difference in viewpoint between that entertained by an agent who is enjoying what he considers to be a very profitable brokerage connection, and I gathered from your testimony at the outset that you did think you had valuable brokerage connections in New York, and an agent who has no brokerage connections and who sees all of the business in his particular locality, if it be a small locality—or the cream of the business—going to outside brokers. He doesn't lose anything if there is a diminution in business transacted through New York brokers because he doesn't get any of it but if the particular brokers that are associated with you do lose some of that business, then you will lose some of it. If the particular brokers who have been throwing the business to you divert it to other channels, then, of course, you have lost something. So that does make a difference in viewpoint, doesn't it?

A. It makes a difference in viewpoint in this explanation: The largest risk in the City of Roanoke doesn't pay a nickel's worth of commission to us or anybody in the State of Virginia. It is the Viscose Corporation which is written under what we term the F.I.A. F.I.A. is a consolidation of a group of companies that joined together and write extra-preferred textile industries. They are highly competent, have an excellent engineering service, and I have never heard anybody say that the F.I.A. did not fulfill a [fol. 958] useful mission in the insurance business. We don't get any commission out of it and doesn't anybody get any commission, with very few exceptions, on F.I.A. business, but I doubt if any of us would want the F.I.A. to go out of the picture because if they did that would go to the Factory Mutuals which would be much worse.

Q. What is the F.I.A.—a mutual company?

A. No, the F.I.A. is a group of fire companies joined together to write special textile risks.

Q. Fire risks you have reference to?

A. Yes, sir, but I think this talk about the protection of the agents and his rights and where he shall have commissions and where he shan't—you overlook altogether that we are now in an era of national operations—country-wide—and we are out of the horse and buggy stage of

the country store where you had the contact and control that we used to have.

Q. As I understand it, you rather believe in concentrating in New York, and the large centers of that kind, the control of this kind of business or do you favor that?

A. I think that the insuring public of the State of Virginia should get the best possible protection that is afforded at the least possible rate that they should pay. I don't care whether it is written and controlled by a New York broker, a Roanoke agent or where it has emanated from as long as the public is properly taken care of at the least cost possible.

[fol. 959] Q. Then you do favor a general centralization of control in New York, or not?

A. No, sir, I do not favor any central control of business anywhere except that the assured and the public get the best possible protection that we can, be it where it may.

Q. Then you think the guiding principle here should be the interest of the public?

A. I do, sir.

Q. Do you or not think that your office at Roanoke is able to render any valuable service to the public in connection with risks negotiated in New York covering in Roanoke?

A. We can, if we are asked to, and will attempt to. Whether we can or not will be dependent upon the particular case in question.

Q. You are in a better position to do that than a New York broker, in most cases, aren't you?

A. Somebody has got to go to the risk and go into the details. The broker who controls the business has already done that. Therefore, the agent, before he can pass on or criticize the form of the broker who has done that which should be done, he has got to go and follow up and see that the broker has done that and fitted the needs to the risk. The broker has done it; it is his business.

Q. How did he do it without coming down there?

A. He goes down there. They go all over the United States wherever they have risks of any consequence if they hope to hold them.

[fol. 960] Q. Your idea then is that if the broker comes to Roanoke and investigates the matter he is then in as good position as you are to write the policy?

A. As good or better.

Q. In as good or better position?

A. Yes.

Q. But if he doesn't come to Roanoke what do you have to say about it?

A. I don't think any assured of any consequence would deal with a broker that didn't come and survey the property that he was insuring.

Q. Then you think that if he did not come to Roanoke and view the risk he would not be in as good position as the local agent would be to render that service, would he?

A. I couldn't write a risk unless I saw it or unless I sent an engineer or somebody qualified.

Q. I asked you whether or not the broker himself would be as well qualified as you were to service a risk in Roanoke and you said you could not service a risk anywhere else in the particular respects you have mentioned but you did not answer my question as to whether the New York broker could service the Roanoke risk without coming down and seeing it?

A. I think it would be better if you saw the physical risk. I guess you could cover it if you had blue prints, pictures and full detailed information on paper that would give you a complete picture of it rather than seeing the physical properties themselves.

[fol. 961] Q. If you couldn't do that why do you think the New York broker could do it?

A. I amended my statement by adding that unless an engineer or somebody had surveyed it.

Q. You think then that there would have to be an engineer inspect the risk or the broker himself would have to do it?

A. I think it would have to be either physically inspected or inspected through the medium of pictures, graphs, blueprints, diagrams, and so forth, that would give you the same conception of your risk to cover as you would get by a personal inspection.

Q. There would be a great deal of work in preparing all of that information, wouldn't there?

A. There is a great deal of work to every risk that you write of any consequence.

Q. And the man who prepares that would certainly have to be on the ground, wouldn't he?

A. Not necessarily, sir. There are plenty of people that send an engineer to gather it all.

Q. He is on the ground, isn't he?

A. Yes, but he may not be as expensive as the man who is going to put out the finished product.

Q. I said the man who prepared these blue-prints would have to be on the ground, would he not?

A. Any risk of any consequence has blue-prints and pictures and everything.

Q. Wasn't the man who prepared that on the ground—the blue-prints?

[fol. 962] A. They could have been prepared when the building was constructed if there hadn't been any changes made. As a rule when changes are made the blue-prints are changed accordingly.

Q. Then you think they could be prepared in New York just as well as in Roanoke?

A. I said I would rather see the risk myself than resort to blue-prints. Somebody else might take a different view from mine.

Q. What I asked you three or four times was whether or not the man who prepared the blue-prints would have to be on the ground?

A. And I replied unless they had blue-prints from the original date of construction, together with amendments to those blue-prints for the changes, the engineer or somebody would have to go and make a personal inspection to get the blue-prints.

Q. The man who made the original blue-prints—was he on the ground or not, or did he make them in New York—whatever blue-prints you are using; I don't care whether they were made ten years ago or twenty years ago.

A. As a rule, as I see it, a blue-print is prepared out of a man's mind and the building is constructed from the blue-prints.

A. I mean a man that can read a blue-print knows just as much about that building or more so than the average person who would go and look at it.

Q. I believe you are talking about fire insurance, aren't you?

A. I am talking about any form of insurance.

[fol. 963] Q. Do they have blue-prints of all of these trucks that constitute a fleet automobile risk?

A. I didn't know you were confining your talk to automobiles. I was talking about fire, casualty and everything else.

Q. Isn't that casualty?

A. Yes, but also elevator liability is casualty and also owner's and tenant's liability—people that might be hurt about the premises, and also products liability is casualty. All of those can be reflected through the medium of blue-prints and other information. Your trucks are not shown on blue-prints.

Q. How about the pay roll of employees on workmen's compensation?

A. You don't need any blue-prints for that and don't need any inspection for that. You get that right out of the auditor's office or the head bookkeeper or wherever the office is. That can be in New York and obtained better than it can at the plant.

Q. You think that it wouldn't help you to interview the drivers of a fleet or to look at the vehicles or make a study from talking with these people, about the method of conducting that business in connection with a fleet policy?

A. That is through your engineering service. Somebody, to properly service that risk, should inspect the vehicles. He should meet regularly with the drivers, have educational safety programs and talks and pamphlets and it should be done by talking to the drivers and looking at the trucks.

[fol. 964] Q. Who ought to do that?

A. It is done in one or two ways. An agent with an engineer from the company could do it. There are no doubt some agents who are eminently qualified to service all of that. We follow the practice of taking an engineer from the company and having him conduct it with us.

Q. Have you ever seen any broker down in Roanoke who wasn't associated with you, inspecting any of these Roanoke risks?

A. Yes, there have been two or three down there trying to get business that I knew and it worried me quite a bit to find out what they were down there on.

Q. Do you remember any other cases than that?

A. Yes, I have seen quite a few there that I happened to know. I see them up there quite often. I see brother agents in the state of Virginia up there. I think they have got a perfect right to come up there. I would hate to think I didn't have a right to come to Richmond.

Q. Where did those brokers live?

A. I don't recall any particular name right offhand. One of them was Bob Greathead. He is with Marsh & McLen-

nan. I didn't make any mental note to retain as to who they were.

Q. What I asked you was whether you ever knew any of them to come down there and examine and inspect a risk for the purpose of preparing a policy?

A. I have not accompanied personally any broker outside of the state, to my knowledge, on a risk in Roanoke.

[fol. 965] Q. Did you ever know or hear of any broker coming to Roanoke and inspecting a risk with a view of preparing a policy?

A. I have said I have seen them there but what they were there for I did not know.

Q. You need not answer this question unless you want to, although Mr. Christian insisted on Mr. Tabb answering. I was wondering whether you would mind stating the premium volume of your office?

A. The Virginia Association of Insurance Agents asked the agents of the state to qualify themselves as to the volume of business they do and pay the dues accordingly. We qualified ourselves in the top bracket. We pay $150 a year and that means all business in excess of $250,000. I think it is in excess of $250,000, and I understand, which I cannot substantiate but the record will, that we are one of twelve who pay such a rate. Does that answer it satisfactorily?

Redirect examination.

By Mr. Christian:

Q. When you used the term "execute a policy" rather than "countersign a policy", did you mean to say you have made yourself responsible to the company for having bound it on the risk as the underwriter of it?

A. We have the power of committing a company to a risk. I have just made the difference between executing a policy, which is taking the blank policy and executing it by Charles Lunsford & Sons, by one of the members of the firm, and that makes the contract valid. Some other agent for the company, licensed to do business outside of the state, can execute it but it is not valid until it is countersigned by an [fol. 966] agent in the state and then we would countersign it "Charles Lunsford & Sons," but we wouldn't consider that we had executed it because the other agent had executed it.

Q. The record in this case includes some policies that say that the policy shall not be binding on the company until it is countersigned. There is no space on the form for the signature of but one agent. There is no space on the form that has been introduced in this record for an executing agent and another space for a countersigning agent, but just the one space. Do policies sometimes come to you executed by another agent on behalf of the company in a space other than that for countersignature?

A. I think the policies will probably have to be changed. Countersigning in that respect meant execution until this Bill was passed, as I understand it. Bond cases have come up since the Bill has been passed and if they are executed by an agent for the company outside of the state who has a right to bind the company, then they write in there "Countersigned at Roanoke, Virginia," or "Richmond, Virginia," by the agent in the city of Roanoke.

Q. In other words, in this Wasena Bridge case a Wisconsin agent signed the bond which was attached to that bridge superstructure contract and then there was a space typed out on the form for you to sign as a countersigning agent?

A. No, sir, we executed it for the Wisconsin agent. We would have countersigned it if he had previously executed it. We executed it, but how I tried to make myself clear was that we had no authority or anything to do with the countersigning of it or the execution of it. We knew nothing [fol. 967] about the risk until the company wired us to execute that bond.

Q. In a case like that you don't feel you have any responsibility to anybody except to sign it when the company tells you to; is that right?

A. It doesn't make a particle of difference to me what it is. If they tell me to execute it for them, I will do so.

Q. There is no state law that says you shouldn't do it; is that right?

A. It says I have to retain fifty percent of the commission if he is a licensed broker. That is an obligation that they impose on me.

Q. I know that before this June, 1938, law became effective it was frequently the case that both from producers away from Roanoke and from companies that you were often asked to become associated in fire risks situated in Roanoke and I ask you to confirm the fact that that is true,

both from other brokers and agents in and out of the state away from Roanoke and companies you have been asked to become associated on fire risks and got a commission; is that right?

A. We have been asked to countersign or execute policies by both the broker and the company, both prior to the Bill and after the Bill.

Q. That is a matter of frequent occurrence in the fire business, isn't it?

A. Well, it is not as frequent as we would like to have it.

Q. State whether it is customary, according to your understanding, for the non-resident producer, whether out of [fol. 968] the state of Virginia or in the state of Virginia, covering workmen's compensation risks in the Roanoke vicinity or fleets, units of which are around there, or chain stores in Roanoke or whatnot, to associate some Roanoke agent with him.

A. If that risk had a location in the City of Roanoke, domiciled and with the head office here in Richmond, and Mr. Tabb controlled the risk, I personally don't think that any agent in the City of Roanoke would be entitled to one penny of commission on that risk because it happened to be domiciled in Richmond.

Q. I am not asking you what you think he would be entitled to. I am asking you what you think, from your knowledge of the business, would be a customary thing for Mr. Tabb in that case to do, to associate a Roanoke agent with him and divide the commission or ordinarily if he would rely on the engineering and claim departments.

A. If he has a location in every town in the State of Virginia, I still don't think that any agent in that locality can render him any service or is entitled to any commission because that service can be given him by the companies, which they are very glad indeed to do, and which I say, with all respect, I think will be done more effectively and efficiently by the company man than by the agent, be it me or somebody else. If he operates in seven states I think the condition is still true, that not an agent in the other seven states is entitled to any commission because it happens to be in that locality. This gentleman that you have mentioned has got to go over all of that; he has to do it; it is his responsibility. If he wants to ask the cooperation of an agent in the State of Virginia or North Carolina or South Carolina I think he could do so but I think the com-

[fol. 969] mission should be agreeable to the two, commensurate with the service that the other agent might give him.

Recross-examination.

By Mr. Staples:

Q. With reference to this bridge bond you spoke of in Roanoke about which Mr. Christian just asked you a question or two, I believe you stated that if the company directed you to sign the bond that that was all you needed in order to go ahead and execute it on behalf of the company and that you would not give any consideration to any matters in connection with it at all.

A. That is my authority.

Q. Is that what you would do and is that what you did do in this case?

A. I wouldn't execute it without authority from the company. They gave me the authority and I executed it.

Q. I say you did have authority and instructions from the company to execute it, didn't you?

A. Certainly.

Q. And did you do anything at all except just execute the bond and not examine it or pay any attention to it?

A. Certainly I examined it. I looked it over. I prepared it, as far as writing the name in and the date, but I had nothing to do with the amount that was involved.

Q. You were interested to see that that contract was properly drawn and in proper shape, weren't you?

A. Well, I had to fill in "United States Guarantee Company of New York" and sign my name to it in Roanoke, [fol. 970] Virginia, and put the seal on it and put my power of attorney on it, if you call that any unusual service.

Q. And you think that just to fill in an ordinary blank bond is all that an agent is required to do in that case and not investigate the contracts or anything of that kind to see whether the blank bond or the printed bond is adequate to cover the particular situation?

A. The bond is prepared through the State Highway Department or P.W.A. and they are very tight and you are either going to execute them or not going to execute them. I don't know of any bonding company that is not familiar with them. They are all standardized bonds and we simply have a very small part in the actual preparation of the bond. The work on bonds is all on getting the bond accepted. The

actual preparation of it anyone could do who has ever filled in two or three of them.

Q. Who is protected by this bond?

A. The City of Roanoke.

Q. Then you have no thought in preparing the bond or in executing it as to whether this particular printed form is adequate to protect the interests of the city or did you have such thought in mind?

A. Yes, sir, I had that much interest and that much curiosity. I previously executed one for my assured, Mr. M. W. Hudgins. I was fully conversant with it and it was as tight a bond as I have ever put my signature on in my life. The City of Roanoke didn't have a loophole in it that they wouldn't be fully protected on.

Q. Then you really did give some consideration to the matter?

[fol. 971] A. I read the bond. I read everything that I sign.

Q. You have to give some thought to reach the conclusion you have just expressed, don't you?

A. Well, I had to read it. It wasn't new.

Q. Did you have to do any thinking about it or did you read it without thinking?

A. I thought it was about the tightest instrument I had ever seen a company write.

Q. Then you did some thinking?

A. I don't think you could read anything and not take it in.

Q. So you did give enough consideration and thought to this bond to come to the conclusion that it was absolutely watertight and protected the obligee in the bond, did you not?

A. Yes, sir, but I would like to put this in, that that service, comparable to whoever passed on the bond, was nothing at all.

JOHN G. YANCEY, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Of what place in Virginia are you a resident, Mr. Yancey?

A. Harrisonburg, Virginia.

Q. What is the name of your company or your corporation or firm?

A. W. L. Dechert Corporation.

Q. With what insurance companies does your agency or [fol. 972] its personnel have agency contracts such as that it represents those companies as their agents in Virginia?

A. Twenty-five fire companies and four casualty companies.

Q. Do you have, either in the name of your agency or individuals connected with it, resident agents' licenses under the 1938 Act for the representation of these various companies?

A. We do.

Q. Please say what are the names of the casualty companies?

A. Fidelity and Deposit Company of Maryland, Employers Liability of Boston, American Employers, Hartford Steam Boiler, Hartford Livestock, North American Inland Marine.

Q. North American Inland Marine Insurance Company?

A. The inland marine department that writes the casualty business for the Insurance Company of North America.

Q. How long have you been connected with the Dechert Corporation?

A. Sixteen years in August.

Q. Am I correct that Mr. Dechert himself was the chief organizer and first president of the Association of Virginia Insurance Agents, Inc.?

A. Yes.

Q. Did Mr. Dechert continue connected actively with the Association until his retirement from the business?

A. No, sir, he got out of the Association before 1923.

Q. When was your agency again represented in the Association?

[fol. 973] A. I think it was in 1934.

Q. You were out eleven years then?

A. Approximately.

Q. When did you get out again?

A. In the late winter or early spring of 1938.

Q. Just last year?

A. Yes.

Q. I hand you a paper dated January 3, 1938, addressed [fol. 974] "Dear Member" and will ask you to say whether

this is a bulletin you received from that Association?

A. It is.

Q. Will you please read it into this record.

A. "Bulletin

"Virginia Association of Insurance Agents, Inc.
"Oscar H. West, Manager
"703-704 Atlantic Life Building
"Phone 3-7977

"Richmond Va., January 3, 1938.

"DEAR MEMBER:

"The Legislative Committee of your Association has prepared several bills for presentation to the coming session of the General Assembly. These changes have the approval of the Bureau of Insurance. We are confident that the two bills, copies of which are attached hereto, are of great importance to the agents of Virginia.

"We understand these bills, if passed, will have the following effect:

(4222) Definitely define 'Local Agent', 'Special Agent', 'Solicitor' and 'Company Representative'; specify who has countersignature privilege in Virginia. (4226A) Definitely establish the status of a non-resident broker in this State; fix his commissions at not exceeding fifty percentum of the regular local agent's commission.

"This will stop the existing practice of Special Agents and/or Company representatives countersigning for non-resident brokers policies of insurance on surety covering [fol. 975] persons or property in this State, and *save for Virginia Local Agents* commission, justly theirs, on such brokered business.

"To insure success of this program we need the help of Association members. Please personally call on *your representatives* in the Legislature immediately. Discuss the bills with them, and if possible, obtain from them a definite commitment for their support of this legislation. Understand, these laws will *not* affect the public. Make that clear to your Senator and Delegate.

"Then—in the interest of the insurance business—which is your business; for the good of your Association; and in cooperation with the Bureau of Insurance, may I ask that

you let us have your response within five days? Use the form on the bottom of this letter.

"If any angle of these bills or their meaning is not clear, communicate with Manager West and your inquiry will have prompt attention.

"Very truly yours, (Signed) E. T. DeJarnette, Edmund T. DeJarnette, Chairman, Legislative Committee.")

Q. Can you identify similarly as a bulletin received by you on the stationery of this Association the paper I now hand you dated February 10, 1938?

A. I do.

Q. I will ask you to read that communication to the reporter so that he may incorporate it into the record.

[fol. 976] "Virginia Association of Insurance Agents
Incorporated

Fire—Casualty—Surety

Oscar H. West, Sec'y-Manager

704 Atlantic Life Building
Richmond, Va.

February 10, 1938.

"DEAR MEMBER:

"On January 3rd your Legislative Committee sent you copies of two proposed bills which were to re-enact Sections 4222 and 4226A of the Code of Virginia. Since then we found it necessary to re-enact other sections of the Code, and there has now been introduced in the House of Delegates by Delegate Emory P. Barrow, a senior member of the Insurance and Banking Committee, House Bill No. 151. Last Tuesday this bill was unanimously approved by the Committee of Insurance and Banking of the House and is now on the Calendar of the House.

"Briefly, House Bill No. 151 definitely defines a resident agent (such as you and I), state agent, special agent and company representative, and specifically states that all insurance contracts except life, title and ocean marine must be countersigned by a resident agent, and the resident agents are to share in the commission on all business placed in the state by outside brokers. This bill should bring many thousands of dollars in commissions to the agents of

Virginia. The bill has the approval of the Insurance Department of the State and your Association. It does not affect the public interest and specifically excepts mutual and reciprocal companies.

"In order to secure the passage of this bill in the House [fol. 977] and Senate your Committee urges you to see, wire or write your Delegate and Senator before noon Monday, February 14th. We are very hopeful of the passage of this bill, but need your assistance by notifying your representatives of your wishes in regard to it.

"The success of your Association depends upon your co-operation in immediately communicating with your representatives. Please act at once and advise us of any reply that you may receive from them.

"Very truly yours, (Signed) E. T. DeJarnette, Edmund T. DeJarnette, Chairman Legislative Committee.")

Q. Had you had the advantage, at the time your resignation from the Association became effective, of an inspection of House Bill 151 which the Association promoted at the 1938 Session of the General Assembly?

A. I had a supposed draft of the law or Bill. I don't know whether that was the one that was finally passed or not.

Q. I want you to read this resolution and say whether you are going to live up to it and also whether you believe other agents are going to live up to it and also say whether you could live up to it or believe other agents could live up to it if they wanted to and try to.

A. I would not be governed by it.

Q. Please say why you would not be governed by it?

A. In the first place, under what I have always understood were the ethics of the business, an agent to whom [fol. 978] brokerage business is submitted is unethical if he approaches the assured at all. In the second place, it is conceded that the broker controls the business and he knows what he is doing and it is up to me to return the contract to him the way he wants it written. I am not responsible for the contract as to its coverage and rates.

Q. Would you feel that it was a practical thing and an advantageous thing to the assured for you, as a countersigning agent, to approach him over the head of the agent or broker whom he had selected to place the contract with

and undertake to discuss with him the good and bad of the coverage and what changes he should make and so on?

A. I don't think it would do him any good and I think it would confuse his insurance.

Q. Could you elaborate that a little bit or illustrate it by experiences you have had or the viewpoints that you have entertained in any business you have had covering outside of Virginia and that you produced in Virginia?

A. There have been lines that we controlled, located in states other than Virginia, in which I have done work as to rates and forms and all the necessary details, sending to a resident of the other state an order for insurance with instructions as to rates and forms to be used. If he didn't do it the way I asked him to do it or if he approached my assured I would take the business away from him.

Q. Why would you feel justified in doing that, Mr. Yancey?

A. Because it is my business. The customer has entrusted me to write it.

[fol. 279] Q. Wouldn't you think, if you were a foolish man or a careless man or an incompetent man that it would be a good thing for your customer to have that person in that distant state tell him how foolish you were or tell him what was right, or would you think that would be a case of too many cooks and that no good would come of it?

A. The person to whom the business is submitted for writing has absolutely no business contacting my customer at all. If the customer entrusts the business to me and I am not competent to handle it, that is a matter between the customer and me. I am the one who is held responsible for recovery in case of loss under the contract.

Q. Would it affect your ability, as the producer of the business, to serve your assured if he were receiving advices from numerous people around the country in the locations of coverage or could you go on serving him with the same efficiency, notwithstanding that he was getting his advice from various other people?

A. It would be very confusing in handling the business.

Q. Would you think these people around at the various localities of coverage, without your intimate knowledge of the entire problem, or perhaps lacking some of your knowledge of the desires and wishes of the assured and the peculiarities and ins and outs of his business, would be able to intelligently criticize to the assured your advices to him?

A. Not if I was performing my duty as an agent.

Q. Would you feel, sitting in Harrisonburg, in cases of risks written in New York or Washington or Baltimore, or [fol. 980] wherever the principal office of the assured happened to be, and covering in Virginia, that you could get sufficient knowledge to criticize the recommendations made by the producer of the business in the locality of the principal office of the assured and who had had the personal contact with him?

A. I certainly would not.

Q. When you resigned from this Agents Association was any effort made to keep you in it?

A. Beginning in November, '37, and continuing until January, '38, we had correspondence with the Virginia Association about continuing and during that time I received a copy of this Bill that the State Association was sponsoring and I immediately notified them that under no consideration would I continue my membership in the Association.

Q. During that time, without asking you to throw any bouquets at yourself, but speaking about them, did they refer to you in their efforts to keep you in the Association as one of the leading agencies of the State and to the great value that the Association would expect to derive from your continued support?

A. They did.

Q. Among other people, I believe Stuart Ragland, a member of the Membership Committee, and Oscar West, the Secretary, and Mr. Ewell, the President, communicated with you, trying to keep you in the Association, didn't they?

A. They did.

[fol. 981] Q. Do you have any feeling that you can express here as to whether your willingness to be a member of this Association would be influenced by its sponsorship of this Bill?

A. The change in the ratio of dues and the Association sponsoring this Bill which I felt would be a great detriment to my business, were both contributory to my refusal to continue my membership.

Cross examination.

By Mr. Staples:

Q. Why do you think the Bill would be a great detriment to your business, Mr. Yancey?

A. It has been my observation in the insurance business that brokers who control business and know they control it, will not pay exorbitant amounts to people for simply signing policies and returning them. They will either put them in non-admitted companies or find some way of writing the insurance so they won't have to pay more than they think is just for the service rendered by the signing agent.

Q. And how much of this brokerage business do you have [fol. 982] that comes to you from these out-of-state brokers?

A. In premium volume I couldn't answer in dollars, without referring to my books and making it up, but we do handle seven or eight very large brokerage lines.

Q. What brokers do you deal with?

A. I deal with any that will send me business.

Q. What would be your estimate of the volume of the busines which your office writes through these non-resident brokers in a year?

[fol. 983] A. You mean premium volume? I would say $20,000 or $25,000.

Q. Do you originate much business in Virginia that covers in other states?

A. I would say about three percent of my business.

Q. In the view that you take of the business which has been sent to you through these brokers, you regard them as the owners of the business, do you not?

A. Absolutely.

Q. Isn't it customary in the fire business for the local agent to always receive some part of the commission?

A. For signing the policy?

Q. For looking after the matter at his end of the line where the risk originates in some other part of the state or some other state?

A. Yes, sir.

Q. What do you think of that custom? Is it a good custom or a bad one?

A. I think the local agent signing the policy is entitled to some compensation for what he does. I believe his compensation should be based on the amount of service he renders and not on some arbitrary amount that the law says.

Q. What is the usual basis of your compensation in this business that is brokered to you?

A. I have written them for from twenty-five to seventy-five percent of the commission.

Q. You being the local agent, received anywhere from twenty-five to seventy-five percent of the total producer's commission?

[fol. 984] A. That is right.

Q. Naturally, if you retained that much of the commission, you thought that you were rendering some very valuable service in connection with that business, did you not?

A. I did where I got seventy-five percent of it.

Q. Even if you only got twenty-five percent you must have rendered some considerable service, didn't you, because the mere signing of your name on a contract, of itself, amounts to nothing, does it?

A. Very little.

Q. It is a mere clerical act, isn't it?

A. There have been some policies I signed where I got twenty-five percent of the commission that I was ashamed to take the money.

Q. Why did you charge the man so much.

A. That is what they said they would give me.

Q. And you weren't turning it down?

A. On a large policy the amount of money you receive, of course, is more on a percentage basis than where the premium involved is small. If you sign a policy with a hundred dollar premium and get twenty-five percent of the commission, which is twenty percent, you get $5. If the premium is $100,000 and I simply sign the policy to accommodate a broker, I wouldn't think of taking twenty-five percent of the commission.

Q. On the basis you are talking about now, if you didn't render any service you probably wouldn't charge him anything, would you?

[fol. 985] A. No, I wouldn't do it for nothing.

Q. What would you charge him—$5? It is just as easy to sign a big policy as it is a little one, isn't it?

A. Yes.

Q. If that is the only service you render, merely signing, you certainly wouldn't think it was any more trouble to sign a large policy than a small one?

A. It isn't.

Q. And would your compensation be the same or would it be greater?

A. I have signed policies for $5 a piece.

Q. Take that case of the $100,000 commission.

A. That was premium—$100,000 premium.

Q. What would the commission be in that case?

A. If it was a fire policy it would be $20,000.

Q. And what is the customary local agent's commission on a fire policy of that kind?

A. Twenty percent.

Q. What does a local agent customarily get who countersigns a policy of that size, produced out of the state?

A. That is a matter of agreement between the agent or was until this law was passed. It was a matter of agreement between the agent and the producer.

Q. In the fire business?

A. Yes, sir.

Q. That is not true all over the state, is it?

A. I thought it was.

[fol. 986] Q. It has been testified to in this case by quite a number of witnesses that the general custom is, in the fire business, for the local agent to get half of the commission where it is produced outside of the state.

A. I think in a great many cases that is so.

Q. Is there any reason that you can think of why the local agent should get that on a fire policy any more than a casualty or surety policy?

A. No, sir.

Q. You think they all stand on the same basis, do you not?

A. If they just sign the policy, yes.

Q. Is there any basis of distinction, so far as you know, between what a local agent should receive in the fire insurance business and what he should receive in the casualty and surety business. I believe you said they all stood on the same basis, so far as you know. Is that correct?

A. I don't see why there should be any difference.

Q. As a matter of fact, Mr. Yancey, isn't it true that in quite a number of lines of casualty insurance, such as workmen's compensation, fleet automobile liability and probably some others, the local agent, if he attends to his business, would really render more service than he would in connection with an ordinary fire risk?

A. Not on a brokerage line.

Q. I mean the service, where he writes it himself, where he originates the business?

A. Yes, in some cases.

[fol. 987] Q. Were your answers in response to Mr. Christian's questions, as to your views respecting this law and

other matters that you told him about, confined to the casualty business or did you have also in mind the fire business when you answered those questions?

A. Either or both.

Redirect examination.

By Mr. Christian:

Q. In these seven or eight big brokerage lines that you have, are any of them casualty lines or are they all fire lines?

A. The seven or eight large lines that I referred to are fire.

C. M. Davison, a witness on behalf of the plaintiffs in rebuttal, being duly sworn testified as follows:

Examined by Mr. Christian:

Q. Will you state your name and position and how long you have occupied it?

A. I am adjuster for the Travelers Insurance Company and have been adjuster for thirty years.

Q. In what city is your headquarters and what is your territory?

A. Richmond, Virginia, is my headquarters and I handle the State of Virginia except Arlington and Fairfax Counties, and I think it is about three counties around Elizabeth City, North Carolina, down there below Norfolk, and about three counties in West Virginia, around Bluefield.

[fol. 988] Q. Do you have to do with the adjustment of claims, or do you have to do with the investigation of claims, or do you have to do with both?

A. I have entire responsibility for the claims of all concerned in Virginia under the various policy contracts.

Q. And that includes investigation and adjustment?

A. It includes investigation and adjustment.

Q. What personnel do you have to assist you?

A. At the present time, I have twelve men and seven full-time girls. Ordinarily I have thirteen men.

Q. Does all your personnel have its headquarters in Richmond, or some elsewhere?

A. I have two men and one girl in Norfolk, one man in Roanoke, and one man with headquarters in Staunton.

The rest of them are in Richmond. Of course, the Richmond men travel around over the territory.

Q. What sort of insurance risks do you have jurisdiction over, life, or fire, or casualty, or more than one?

A. Every form of insurance written by the Travelers, all the contracts, life, accident, casualty, and fire.

Q. What is the average length of employment of the members of your staff, including yourself?

A. Approximately seven and a half years.

Q. Has all this staff been engaged solely in doing this kind of work during the period of its employment by the company?

A. Yes.

Q. To what extent are you and your subordinates com- [fol. 989] pensated in a contingent manner by commissions or otherwise than by straight salary?

A. Not at all.

Q. Please say, as to any particular contract of insurance with which you and your subordinates may become connected, what is the first thing that happens to start your connection with it?

A. We get a report, over the telephone or by mail or by wire, and immediately ask for a registration and immediately start investigation.

Q. From whom do these telegrams, telephone calls, and letters come, the agents or the assureds?

A. They come from both.

Q. When does this type or form of registration come from an agent, and when does it come from the Branch Office?

A. When the agent is the direct Home Office-reporting agency; otherwise, from the Branch Office.

Q. It would come from Mr. Tabb's agency in connection with all casualty forms except health and accident, would it not?

A. Only on business written by Mr. Tabb's office.

Q. I mean, when he had written the business?

A. Yes.

Q. And he reports to the Branch Office on accident and health if he has written it and, therefore, those forms would come from the Branch Office?

A. I think so. That might have been changed; I think he used to report through there, but I am not positive whether he does, or not.

[fol. 990] Q. When this registration comes from a Branch Office, it is because some agent of the company other than Mr. Tabb's agency in Virginia has produced the business?

A. Yes, or, we had better say, from the branch writing the business or from the Home Office, you understand. If it is not written in Virginia, we might get that registration from the Home Office or from some other branch.

Q. In other words, if the business was produced outside of Virginia and covered in Virginia, this registration would come from the Branch Office outside of the State or from the Home Office?

A. Yes.

Q. And what we speak of as "the registration" is simply the giving to you of a record of the fact that the company has the coverage, through the party reporting it to you and giving you notice of the fact that an accident or a loss has arisen or is impending; is that right?

A. The registration does not give us anything except the coverage.

Q. You would have the phone call or letter or telegram telling about the accident, and then that is followed by the registration?

A. Yes, sir.

Q. And you know in what coverage the policy is carried by the company?

A. Yes, sir.

Q. There has been introduced in this case, a form of ac-[fol. 991] cident report used in connection with automobile accident cases. I believe you have equivalent forms in connection with the various types of health and accident insurance, including group health and accident, workmen's compensation and liability contracts, do you not?

A. Yes.

Q. Are these forms of which I have just spoken forms required to be signed by the assured?

A. Yes.

Q. Who gets those forms filled out by the assured?

A. The policy instructs the insured to fill them out and we always request the insured to fill them out and the insured is supposed to fill them out, and the insured practically always signs them.

Q. Where do they come from to you if they originate in Richmond, directly from the assured to a member of the

Claim Department, or from the assured to an agent and then to the Claim Department?

A. I would say ninety percent of them are sent or given directly to a member of the Claim Department. Possibly ten percent of them come through an agent.

Q. Is that true outside of Richmond, as well as in Richmond?

A. Outside of Richmond more of them would come through an agent.

Q. Is this form supposed to have the blank spaces filled in by the assured, describing in his own language what happened?

A. Yes, sir.

Q. At what stage in the doing of your work following the phone call, or the letter, or the telegram telling you of [fol. 992] the accident or the pending loss, do you get the registration?

A. We request it immediately by telephone to Mr. Tabb's office. In fact, in the same conversation that it is reported we will say, "Send us a registration at once."

Q. Do you commence work in the Claim Department before you get the registration, or afterwards?

A. I believe we start on about fifty percent of them before we actually physically get them. We get some assurance that we have the insurance.

Q. At what stage of the work do you get the forms signed by the assured?

A. Immediately.

Q. That is the first thing the Claim Department does after it gets the registration?

A. Well, we get them very often before we get the registration. Sometimes it is an automatic process, Mr. Christian. We order the registration, and depending on how quickly we can get after it, we go ahead.

Q. Then you go ahead and conduct an investigation, as I understand it, through this personnel which you have described, and if it is a very large claim and there is liability and you are able to adjust it on a fair basis without any lawyers being called in, you do it; is that right?

A. Yes, sir. In any kind of case that is reported to us, we immediately start an investigation and make an adjustment just as soon as we can properly evaluate it.

[fol. 993] Q. And if trouble arises about the valuation,

then the lawyers come in, and if you do not settle the claim, you have a law suit; is that right?

A. Yes, sir. Very few of them go into law suits.

Q. Please say in what way, if any, the producing agent substantially participates in assisting your department to render value to the assured in connection with the adjustment of claims.

A. In only a rare instance does he participate in any way, shape, form, or fashion.

Q. Do you ever encounter cases where you do not get proper cooperation from the assured in assisting you to make an investigation or to otherwise protect the interests of the company and the assured?

A. Once in a long while, yes.

Q. In those cases, do you call on the producing agent?

A. Yes, frequently, regardless of whether he is in Virginia, or Ohio, or San Francisco, or New York, or wherever he is.

Q. Now, suppose that your claim is not a very bad claim, but is a claim by an assured, say, in a burglary or plate glass policy, boiler property damage claims, collision insurance, and the like: Does the agent participate any more substantially in the work of your department there than in the other claims?

A. No.

Q. What is there about a producing agent, whether he be in Virginia, or San Francisco, or wherever he is, that gives him the characteristic that enables him to help you when you do not get proper cooperation from the assured? [fol. 994] A. Well, he has had a previous acquaintance with the assured and frequently knows him quite well, and we are perfect strangers to him.

Q. Is he usually a man who enjoys the confidence of the assured and who has some degree of influence over him?

A. Yes.

Q. I believe you said that you do exactly the same work and furnish exactly the same service on claims produced outside of Virginia, covering in Virginia, as you do in connection with those produced inside of Virginia and covering inside of Virginia, but I am not certain that you said that and I ask you to correct me if I am wrong in that understanding.

A. You are not wrong; that is absolutely true.

Q. When these registrations have been made and the time is ripe for the making of an accident report, where does the accident report usually come from in the case of business produced outside of this State and covering in the State?

A. Either from the local representative of the assured or from the producing agent or from the Home Office or from the assured's Home Office.

Q. Do you have any more trouble, according to your experience, in getting to work promptly and efficiently in a case produced outside of the State than you do in a case produced inside of the State?

A. Not if the assured's representative is at hand, but if he is traveling around, we have right much trouble finding him sometimes.

[fol. 995] Q. Well, you would have that same trouble if he was an inside-the-State assured who was traveling around, wouldn't you?

A. Yes.

Q. What do you do after you get a registration and the accident report and the question arises in the Claim Department as to whether the subject matter of the claim report is a casualty covered by the contract in question?

A. Submit it to Hartford for decision.

Q. Do you submit it to Hartford for decision if the business was produced through Mr. Tabb's office?

A. Oh, yes. It makes no difference where it was produced.

Q. Do you communicate with Tabb before you take it up with Hartford?

A. Frequently.

Q. Suppose it is produced in the Branch Office; do you take it up with the Branch Office?

A. Oh, yes.

Q. What do you do if it was produced by a Branch Office outside of Virginia? Do you take it up with that Branch Office before you take it up with Hartford?

A. No; I would send it to Hartford and let them take it up with that office.

Q. Assuming that you have told Mr. Tabb's agency that you do not believe the accident is covered, or that you have a question in your mind that it is covered, what do you ask him to do when you tell him about it.

A. I ask him whether or not he wants to write me a [fol. 996] letter for transmittal to the Home Office asking that consideration be given to coverage for any reason whatsoever. Now, you understand, Mr. Christian, this coverage question comes up possibly twice a year; it is an extremely rare proposition, and it is so rare that it is almost out of the picture, you might say.

Q. Now, what happens when it is produced outside of the State and you raise a coverage question? Do they write back to the producer and ask him whether he wants to contend differently from what you say?

A. I imagine they would.

Q. Or ask him if he wants to write a letter or make any expression about it. Is that your understanding of what occurs?

A. Yes.

Q. Do you sometimes have cases where you raise those questions and where, after hearing the views of the producer, the company tells you to go ahead and consider it covered, even though you do not initially feel convinced that it is?

A. Oh, yes.

Q. Then, you sometimes have some cases, I take it, when they confirm your view that you should not consider it covered; is that correct?

A. Well, you know, a whole lot of that is a possible misunderstanding of the way the policy was written. It is more essentially an underwriting proposition than it is a claim proposition. The Claim Department is only responsible for taking care of contracts as in force, and if anybody else wants to change the contract or can change [fol. 997] the contract, that is their business, not ours.

Q. You mean, sometimes when a coverage question arises, there has been a misunderstanding on the part of the assured or the agent or the company and there are claims made that the policy ought to have written in a different way?

A. Yes.

Q. What detriment, if any, is there to the interests of the assured where questions of coverage are raised because the producer is a non-resident of Virginia, rather than a resident?

A. None, so far as I am concerned.

Q. Do you know of any detriment?

A. No, I do not know of any.

Q. I would like you to state the instances when you rely upon the producing agent or any other agent to investigate those accidents or assist you in the investigation or in negotiating a settlement?

A. Agents may have little property damage cases happening around in the territory and the insured comes in and tells him about it and he sends in a report with an estimate or a bill for $5 for a fender, or something like that, and will just send out a proof to the claimant and the repairman and settle it, but other than that there is none.

Q. Are those occasions limited to cases when the amount involved is trivial or de minimus?

A. They are limited to cases under $25 and usually under $10.

Q. Are you in any way accountable to the agent for your actions?

[fol. 998] A. I have no authority over the agent and he has no authority over me.

Q. How do you determine the value of a third-party claim or claim to an assured in determining the amount to be paid?

A. By investigation by my employees.

Q. Does your long experience assist you in that, or is experience necessary to evaluate those claims?

A. Mr. Christian, this claim business is a highly specialized business, and we do not figure that a man earns his salary until he has been with us at least two years, devoting his time exclusively to claim work. There isn't any question but what experience is the most valuable thing that a man can have in claim work.

Q. There was some testimony given by Mr. Tabb the other day, from which I received the impression from him that it was not an unusual thing for him to influence the amount of your settlement, and also that your department confers with him on claims on policies originating from his office before you make settlement, and at one point he said that, "When we have information upon which we wish the claim not paid, we advise them and they confer with us before they make a payment." I would like you to comment on this testimony by Mr. Tabb.

A. Mr. Tabb has represented the Travelers in Richmond for forty years. He was General Agent for the company for a great many years before they had a Branch Office.

He considers himself the Travelers Insurance Company in this territory, or top man, and he is a very loyal, cooperative gentleman, and I have no doubt but what he entertains [fol. 999] the idea that he has a great deal more influence than he actually has. It is a rare occasion that Mr. Tabb ever comes into a claim settlement before it is settled, and then only where there is some misunderstanding of some sort, or he might, once in a while—I don't remember when he ever did—and he certainly would be expected to transmit to me any information that he got which might be helpful to us, but so far as deciding claim merits and placing valuations on the case, Mr. Tabb is an excellent agent, but I do not think he would know how to evaluate a claim.

Q. What is your procedure when he asks you to do what you would otherwise not have done or to not do what you otherwise would have done?

A. Well, I try to point out to him that, of necessity, he has not the complete picture and, also of necessity, his experience is in selling insurance and not in evaluating claims, and at the end of the conversation we usually get together on my ideas, in fact, we always get together on my ideas.

Q. In those cases of which he speaks where he does not want a claim paid, why is it that he does not want the claim paid?

A. Well, there are a whole lot of reasons—of course, running up an insured's experience, or usually it is because the insured has got a claim, or thinks he has a claim, against a third-party in an automobile collision and the insured thinks that if he makes a payment on the property damage claims, that he would not have a right to assert his action for damage to his car, and in those cases we have to explain to Mr. Tabb and to the insured just what the circumstances [fol. 1000] are and what the probable outcome will be if we do not make an adjustment. Of course, as a general proposition, we don't want to make an adjustment if it is a fifty-fifty proposition or if the insured is not liable, but if the insured is liable, we point out to him that it is to his advantage to go on and make settlement for him because, if we have to make an additional payment, it is going to run up his experience. On property damage cases where the amount involved can be pretty definitely settled, if, after all our conferences and arguments pro and con, we can't agree, then I say, "Well, anybody can win or lose a law suit. There is always a possibility in them. Go

ahead; we will go along with you," but if there is a personal injury involved, where the amounts cannot be definitely fixed and made to remain stationary, we stick by them until we get them to agree that they had better let our experience determine the issue and go ahead and make a settlement of it, because that is for the benefit of the insured, as well as ourselves.

Q. Even though he doesn't know it?

A. Even though he doesn't know it. In fact, in the majority of those cases, he has only a part of the picture. He has simply what is told him, and our investigation takes in the whole picture.

Q. I mean, ordinarily, if you want to pay a claim against the assured, and the assured thinks he has the claim, and not the other party to the accident, it develops, before you get through, that he doesn't know the whole story; is that right?

A. Yes.

[fol. 1001] Q. In the cases we are speaking of now, the non-resident producers make requests not to pay, the same as resident producers do?

A. I do not differentiate between the two, Mr. Christian, and we get very few of those cases and I just could not say 100 percent whether we do or whether we do not.

Q. Well, do you sometimes get those requests from non-resident producers, as well as resident ones?

A. Yes. Of course, we write so much less in proportion of the business out of the State than we do in the State, but we have gotten them.

Q. When you settle one of these third-party claims amicably, or it has gone to final judgment, my understanding is that you make a report?

A. Yes, there is a form that we complete to be signed by the Chief Adjuster at the Home Office for transmittal to the assured, giving a summary of the settlement, and a copy of that form is sent to the producing agent or the Branch Office.

Q. When you send that to Mr. Critchfield and he finds it is in proper form to send out of the office, he sends it on to the assured?

A. I presume he does, but I never saw him mail one out.

Q. When you fill out this form, do you address it to the assured?

A. Yes.

Q. How many claims are handled per year in your office, Mr. Davison?

[fol. 1002] A. There were 9,600 last year and 10,007 the year before, in round figures.

Q. In how many cases would you say that you get this assistance from the producing agent in gaining the cooperation of the assured?

A. I would say, certainly, not to exceed six times, and probably three or four.

Q. In how many cases would you say that the producing agent influences the settlement of the claim?

A. Never, so far as I am concerned.

Q. In how — cases is the amount paid to the assured or the third-party claim reducible because of an agent's influence?

A. Not at all.

Q. Are you speaking of your whole experience, or just a particular year?

A. The whole experience.

Q. In what percentage of the Workmen's Compensation cases is a payment made to a nurse or doctor or hospital or the injured person or somebody else?

A. Oh, 95 or 96 percent.

Q. In the automobile cases, in what percentage of the cases would a payment to somebody in some amount be made?

A. Probably 70.

Q. And property damage cases?

A. I think it is 52, in that neighborhood.

Q. The other cases are claims of an assured, and I presume that unless because of fraud or non-coverage, in these [fol. 1003] cases there would be an obvious payment of 100 percent, wouldn't there?

A. Yes.

Q. There has been testimony here about the fire insurance business, to which I have objected as immaterial, but the Court has not yet ruled on it, so I am compelled to proceed without knowing whether it is going to be considered material or not, so I ask you, in adjusting fire risks where the business was produced outside of Virginia and covering in Virginia and there has been a local agent associated with the producer and shared in the commissions, do you ever have any contacts with this local agent who shares in the

commission, or are your contacts exclusively with the producing agent, if you have any contacts with any agent?

A. With the producing agent.

Q. As a matter of fact, do you often have contacts with the producing agent in adjusting fire risks?

A. Only to get the daily report, that is, the record of insurance.

Q. What is the Richmond Safety Council?

A. That is a community fund project organized for the promotion of safety of all sorts and descriptions in the City of Richmond.

Q. Mr. Tabb used the possessive of that in speaking of it the other day. Is he a member of the Board of Directors of it?

A. No.

Q. Are you a member of the Board of Directors?

A. Yes. Mr. Tabb probably has been in years gone by. I [fol. 1004] know that Mr. Brockenbrough has been; I am not sure, but I understand Mr. Tabb has been.

Q. Do the casualty insurance companies or the insurance agents have any control over that organization or any responsibility for it, or do they deserve any special credit for its existence, more than the lawyers of Richmond or anybody else contributing to the Community Fund?

A. They might have assisted in organizing it originally. I have been on the Board of Directors over two years; I think I have been there three or four years, and they have no control over it. Now, of course, they cooperate with it and they make a contribution once in a "blue moon," but very seldom. It is practically altogether dependent on the funds from the Community Fund. They are not allowed to solicit to any great extent outside of the Community Fund.

Q. When Mr. Tabb speaks possessively about this Council and says that "We give rewards to drivers," do you connect that up in any way with insurance companies or insurance agents as giving those rewards?

A. No, not now. As a matter of fact, I heard that, several years ago, Mr. Tabb got the Travelers to send down a silver cup one year, but they don't do that any more. There are no money awards given any more. They have badges and buttons and bronze figures that they give out.

Q. I believe they also interest children and send out literature to employees of labor, such as posters urging safety considerations, and the like, don't they?

[fol. 1005] A. Yes.

Q. Well, do they pick out only employers of labor who have insurance, or do they select people who employ labor?

A. They don't pick out anybody particularly, except where they think that the literature will do good in safety work—home, road, street, or anywhere else—and the literature is usually furnished them by the National Council of Casualty and Surety Underwriters or by the companies, and they may get it through agents, and they print a little literature themselves, but not a great deal.

Q. Do they send this only to employers who have insurance?

A. No; they send it to insured or uninsured or anybody they think it will make an impression on.

Q. And if those people to whom they happen to send it have insurance, do they know, when they send it, whether that business was produced by Mr. Tabb or by a non-resident agent?

A. No, sir. I expect they send Travelers' literature to F. & C. policyholders, and F. & C. literature to Maryland Casualty policyholders. They don't know whom they are insured with and don't care.

Q. How does your department have an influence on loss experience and the resulting loss of life and limb and property in transactions covered by the casualty contracts of your company?

A. Well, Mr. Christian, I would say that our greatest benefit—if it is a benefit, and I hope it is—to the policyholder is our proper investigation in the valuation of claims. Now, if, in the investigation of a claim, we find some de-[fol. 1006] fective condition or some unsafe condition which, in our opinion, should be remedied, we will immediately tell the proper parties of the employer or the assured and suggest that it be remedied and we will make a report to the engineering department and they will carry through on any safety work that may be needed along that line. That is their responsibility.

Q. When you notice carelessness, especially, I suppose, recurrence of carelessness, is causing accidents, do you wait for somebody to ask you to go to the assured, or do you go, yourself, and tell him what you have noticed?

A. Oh, we automatically do it right away. We won't wait for somebody to tell us—of course not.

Q. Do you usually go to the higher-ups in there, or do you just go to the men themselves who have been guilty of the carelessness or accident?

A. Oh, no, we go to somebody in authority.

Q. You do that yourselves; you do not need Mr. Tabb to interview and talk to that man?

A. Oh, no. We talk to him before Mr. Tabb knows we have found it, and when we get back, we talk to Mr. Murphy, in the Engineering Department and if, in his opinion, it needs to be rectified, he goes out and tries to rectify it. Of course, before we get through, they may have Mr. Tabb and Mr. Murphy and maybe all three of us into the proposition. That very rarely happens.

Q. Do you ever have these assureds come to you and express concern that they have had what they consider an [fol. 1007] excessive accident frequency experience and ask you for suggestions, or ask you whether they are right in their fears that their frequency is too great?

A. Oh, yes. They will usually be the result of our impact from time to time, don't you see, to draw it to their attention, or it may be the impact of the losses that have been reported, and they will occasionally ask us to supplement Mr. Murphy's work by talking to the employees, or talking to the drivers, or sometimes talking to anybody else. They have had me go out to their house, or send their 19-year-old daughters out to my house to give them a lecture.

Q. How often do you think these talks are given because of something that some agent does? Is it a large percentage of your talks that come from that, or a small percentage?

A. Well, there are only a few talks a year, as far as that is concerned, but I would say that the great majority of cases are not from the agent. You see, we get instructions on that, sometimes from the Home Office, and sometimes from the insured, and sometimes from Mr. Murphy, and sometimes an agent.

Q. Your section of the Travelers' Branch Office and the section occupied by Mr. Murphy and his subordinates are adjoining, are they not?

A. Well, there is no door between them, actually physically joined; there is no open door. There are two doors, but the two offices do adjoin each other.

Q. You go out into an inside corridor and walk right to Mr. Murphy's office, do you not?

[fol. 1008] A. Yes.

Q. You and he see each other often during the course of the day you are both in town?

A. Oh, yes.

Q. You and he talk about loss experience and accident frequency in connection with various contracts of the company?

A. Yes, frequently.

Q. You even suggest things to him that he should do to help lower accident frequency?

A. No; I suggest to him what I think might be done to lower accident frequency, and let him do what, in his good opinion, he thinks ought to be done. That is his responsibility.

Q. He can throw your suggestion in the waste basket, or let them "come in one ear and go out the other," or he can put them into effect, can he not?

A. Absolutely. I have no more authority over Mr. Murphy than Mr. Tabb has over me.

Q. Suppose you had made recommendations designed to aid in safety, and they were not followed very well by the assured; what would you do?

A. I report to Mr. Murphy, and I may appeal a little to the Home Office, too. I don't often say, "I told you so." That doesn't happen very often, Mr. Christian.

Q. Do you know what casualty companies have salaried claim employees making their headquarters in the State of Virginia?

A. Well, I know that the Aetna, the Fidelity & Casualty, the New Amsterdam Casualty, the Globe Indemnity Com-
[fol. 1009] pany, which includes the Eagle and Royal Indemnity Companies, the Maryland Casualty Company, United States Fidelity & Casualty Company, the American Mutual Company, Liberty Mutual, Lumbermen's Mutual, State Farm Mutual, Employers Liability Assurance Corporation, Indemnity Insurance Company of North America, and its affiliates, the Bituminous Casualty Company, Columbia Casualty Company, which is combined with the Ocean Accident & Guaranty Company, and the Glenns Falls Indemnity Company, and the Travelers all have salaried employees. There may be some others. I am not a hundred per cent sure of that.

Q. You don't say these are all; you just say you know these do have?

A. I just know those. There may be some others with affiliates that I don't know. You see, we have the Travelers Indemnity, the Travelers Insurance Company, and the Charter Oak Insurance Company.

Q. And all of those companies get the benefit of your department?

A. Yes.

Q. Do the claim people here have a local claim organization?

A. Yes.

Q. What is it called?

A. The Claimmen's Association of Richmond.

Q. You have meetings, do you not?

A. Once a month.

Q. Do you have any national organization?

[fol. 1010] A. There is a National Association of Casualty and Surety Underwriters that may be the parent organization of all these local Claimmen's Associations; I don't know whether it is, or not. They helped us in organizing and sent us plans for drawing up charters, and all that sort of business, but whether or not they are a national organization and we are a subsidiary, I don't know. We formed ours and wrote our own charter and everything.

Q. Are people in positions similar to yours generally members of these local organizations?

A. Yes.

Q. Do you frequently have contact through this organization with other claim people, as well as in your claim work?

A. Yes; I have more contact with them at these Association meetings than otherwise.

Q. Do the companies without salaried claim personnel in Virginia employ independent adjusters?

A. Yes, sir.

Q. How do you regard these independent adjusters, such as the Nichols Company with offices in Virginia? Do you think it furnishes an adequate claim service to its clients?

A. I should think it would furnish a proper claim service—I trained the manager.

Q. You also trained the manager of the F. & C. Department, J. C. Kidd, did you not?

A. Yes, and the Branch Manager of the Globe Claim Department.

[fol. 1011] Q. I want you to compare the investigation and adjustment work and the safety work of the Claim Department of other companies than the Travelers to its similar work and say whether they have the same kind of personnel that you have and the objects and the aims are the same, and whether they carry out the work in the same way you try to carry yours out, or whether they have different types of personnel and different objects and proceed along different lines. I am speaking of the companies primarily that you have listed as having these people here who are members of the same Association as you are and whom you are largely acquainted with.

A. I would say that the companies whose names I have called write by far the great volume of the casualty business in the State. Now, I would also say that my business and social connections with these men have impressed me that their objectives are the same as ours, that their functions, so far as they apply to the volumes at their disposal, are the same as ours. Of course, we happen to have a bigger volume and we have more men, but the fact of the business is that all of these men are, I believe, and I am certain most of them, well trained, specialized claim men. I have been in the business a right many years and I have seen right many claim men and I think that will be generally borne out.

Q. In this case, a witness is shown to have stated that in most Workmen's Compensation cases proofs of loss are not necessary. You have filed here the accident report that an employer is required to file at the time your Claim Department starts work on such a claim. I ask you whether it is [fol. 1012] not also a fact that the injured employee must, at the time of settlement, himself sign a settlement agreement containing a statement of the details of the accident and the compensation agreement?

A. The employee has to sign an agreement outlining the accident and injury—not necessarily exactly, but a pretty good memorandum of it—and that agreement must be approved by the Industrial Commission of Virginia. The employee must also sign a final receipt when the final payment is made. The agreement starts the payment and the final receipt ends it.

Q. In what States have you done claim work aside from Virginia?

A. Maryland, Pennsylvania, New York, Connecticut,

Massachusetts, Ohio, Indiana, West Virginia, Kentucky, Tennessee, North and South Carolina.

Q. You have had, then, I take it, contact with claim men in these other States, have you not?

A. Oh, yes.

Q. Will you please state to what extent claim work for stock casualty companies is done in these other States according to the methods employed in Virginia, and to what extent the methods employed in these other States differ from the methods employed in Virginia?

A. Other than local characteristics, there is none. Of course, there are local peculiarities that are different.

Q. You mean by that, that there are different——

A. Personalities. For instance, we can be far more polite here than they can in New York.

Q. I suppose there are some localities where you perhaps [fol. 1013] put greater credibility in people than you do in other localities, aren't there?

A. Oh, yes, you can certainly do that.

Q. But the methods that are pursued are the same; is that correct?

A. Yes.

Q. Speaking of these forms that you have filed, do casualty companies generally have similar forms to those which are supposed to be filled out in the same manner and disposed of similarly?

A. Of course, they draw up their own forms, but they have such a form.

Cross-examination.

By Mr. Staples:

Q. Mr. Davison, what territory do you cover in your travels, if you do any traveling, or do you confine your duties mostly to the Richmond Office and supervising the other agents?

A. Do you mean the other claim agents?

Q. Yes, the other claim agents?

A. Well, I travel. Of course, most of the time I am in the office, but I get all over the territory every once in a while. I am the trouble man.

Q. There are a number of claims which you stated had been settled through your department. Is that inclusive of

or exclusive of the small claims that these resident agents settle, involving less than $25?

A. Inclusive of everything in the office.

[fol. 1014] In other words, you consider that a claim in your office, even though it is settled by a resident agent?

A. Oh, yes.

Q. What percentage of those claims would you estimate consists of these small claims under $25 that are settled by these resident agents?

A. I would imagine that we have not over 200 of them in a year.

Q. Do these producing agents settle the bulk of those small claims or not?

A. No.

Q. Suppose you have a small claim at Cloverdale, we will say, would your claim agent settle that, or your producing agent—say, about an eight or ten dollar claim?

A. It depends on whether the local agent could settle immediately. The only time the local agent settles a claim is where an accident is reported and the claimant and the assured are right there together. He is not supposed to investigate any case, but if the assured goes to his place and admits that it was his responsibility and the fellow has a little damage and has gone to a responsible repair man, the agent says, "Send the bill in here and I will send it to the company and they will pay it."

Q. How does it happen that these individual automobile owners who have accidents to their cars in which claims are made against them for negligence, and who have had no contact with your office, happen to send the claim direct to you, instead of getting in touch with the local agent who wrote the business for them?

[fol. 1015] A. Well, I don't know why they do that, except we have been scouting around through Virginia so many years and we have had a Claim Department here so many years.

Q. I can understand he would get in touch with the Travelers Insurance Agent, if that is the form of insurance he had, but I cannot understand how an individual automobile owner who has never had any experience to amount to anything would take it up with a stranger, instead of with the man who has had the business transaction with him in

writing the policy. That has been the experience I have had, personally and otherwise.

A. Well, the most of them have a Travelers' card, don't you see, and when the "Cop" comes when they have an accident, the first question that comes up with them—unfortunately, lots of times—is "Have you got insurance?" and if they have got insurance, "What company is it with?" The officer asks them, "Are you insured?" In fact, I think there is a question on the accident report that goes to the State Police Department, "Are you insured?" and in various and sundry ways they come in. Now, you understand, I did not say that we got the majority of our reports of automobile cases direct from the policyholder outside of Richmond. Did you understand that I said that?

Q. I thought you said you got 80 percent of them——

A. No, I said, not in Richmond, but the outside territory. I expect we get, easily, of the individual automobile policies, fully 60 or 70 percent of them through the agent.

Q. That is what I was surprised at.

A. Oh, no, we get, outside of Richmond——

[fol. 1016] Q. It seems to me that the natural thing would be for the man who has a contract of that kind to get in touch with the only man he knows, and not go looking around for a stranger?

A. That is true, but, you see, in Richmond here, the policyholder telephones Mr. Tabb's office or the Branch Office, and they are instructed to call us and give the telephone number of the man who called them to report the accident, and we immediately call the policyholder.

Q. Then, even those people get in touch with you through the agent, do they not?

A. A great many of them do, but they do not fill out that form. We go to see them and they fill out the form for us.

Q. Your Claim Department helps them fill out the form; isn't that the case?

A. The policyholder signs it.

Q. Yes, he signs it, but your agent usually sits down by him and they talk together and fill it out and then he signs it, isn't that true? Isn't that the customary way of doing it?

A. The policyholder is supposed to fill them out. I said fifty percent of them are filled out by our claim agent, but the policyholder is supposed to fill them out, and we get the form, you understand.

Q. But, outside of Richmond, you think that probably seventy percent of them are filled out by the local agent?

A. On the individual risks, yes.

Q. How many of your claim agents have authority to settle claims?

[fol. 1017] A. All of them.

Q. Do you undertake to pass on every claim settled?

A. Oh, no.

Q. What percentage of the claims settled in your office do you think you pass on individually?

A. You mean, before the settlement is made?

Q. At the time of the settlement. At the time that the agreement is reached, it has to be approved by your office, does it not?

A. Do you mean by me, personally?

Q. Yes.

A. Probably ten percent.

Q. Do you have any personal knowledge of those others that are handled by the other claim agents?

A. Yes, sir. I see, well, easily 90 percent of them before they go in to Hartford.

Q. Do you mean you see the paper itself?

A. Yes.

Q. But you do not undertake to discuss any very large percentage of those claims with your assistants, do you?

A. Right many. Mr. Staples, perhaps I can qualify that for you by telling you this: I have three assistant adjusters in the office who go through the routine on routine cases. Now, if there is any point involved in the case in which there is doubt, or if they are big cases, of course, I am always consulted, but I always look over the mail every morning if I am there and pick out such cases as I do not have a running [fol. 1018] idea on, don't you see, and then, at the end of thirty days, this summary report is filled out and sent to Hartford, and I review those 30-day reports; then at the end of 90 days, we make another summary, and any automobile liability, property damage, and public liability case on file with this summary is sent to Hartford. That 90-day report, as we call it, that is the first time Hartford sees the file. I review those, so I have a pretty fair running knowledge as they go along, don't you see. They consult me on compensation cases about medical and about hospital, inspections and estimates. In each case a reserve has to be put up at the end of thirty days, don't you see, and I

keep in constant contact with the reserve of the individual case.

Q. What percentage of the claims of your whole territory arise in the City of Richmond?

A. Well, I would only be able to estimate that on the percentage of business written in the State. I think the business written in Richmond is somewhere around 22 or 23 percent of the whole business written in the State, and probably the same proportion of claims arises on that business that arise on the other. That may not be within five percent of correct; that is just a running guess.

Q. Who comes in actual contact with the parties involved in an accident which happens in other places in the State than the City of Richmond?

A. Our claim man.

Q. Who are traveling around over the State?

A. Yes. Of course, some of them are handled by corre- [fol. 1019] spondence from our office.

Q. You don't know exactly what offices these local resident agents may perform with these men who investigate such accidents throughout the State, do you?

A. I know right much about it. I have seen right much of it.

Q. You just have a sort of idea, but——

A. No, sir, I have personal knowledge. I have been to every one of those offices, I know practically every agent we have in the territory, and I have been to their offices, and many of those agents have been with us for a number of years.

Q. But you don't see what the agent does, do you?

A. I can read the handwriting on the wall. As a matter of fact, the agent exercises a very important function. He writes the business and puts it on the book; it is his job to do that; it is our job to handle the claim.

Q. You think that if one of these agents does have anything to do with it, he leaves the handwriting on the wall to show he has been acting in it?

A. I think there is no questoin that it would be there.

Q. Would it be on the report? If the agent filled out the claim, would it appear there that the agent had done it?

A. Not necessarily. In fact, it probably would not. There is nothing on the report for the agent to fill out.

Q. Of those 9,600 claims that you had, how many would you say were fire claims?

[fol. 1020] A. About 300.

Q. 300 claims out of the whole number?

A. I may be 25 off one way or the other.

Q. And what is the major part of these other claims? What type of claims are they, generally speaking?

A. Well, I expect compensation and automobile would take three-fourths of the other, and they run about neck-and-neck.

Q. Of course, a compensation claim is what is known as a "third-party claim," as is also an automobile liability claim, isn't it?

[fol. 1021] A. Yes. You understand, I mean all kinds of automobile claims, not necessarily automobile liability. Our automobile liability claims average about 40 a month. That would be about 480 a year, that is, automobile liability reports. They did run, year before last, one and one-fifth claims per report. You understand, we get a report from an insured that may involve fourteen people hurt or three or four property damage claims and a collision claim, but I am talking about individual first reports on automobile liability.

Q. What other kind of automobile claims are there besides liability that you have reference to?

A. Automobile property damage, automobile collision, automobile fire and theft, and comprehensive—that covers everything except collision; it is fire, theft, glass, water damage, cyclone, and all that sort of stuff.

Q. Do you have many collision policies?

A. No, sir, not very many.

Q. Do you have any theft policies?

A. Right many.

Mr. Christian: Do you mean policies, or claims?

Mr. Staples: Claims, I meant.

A. (Continuing.) I don't know, Mr. Staples, I would say somewhere in the neighborhood of 50 a month.

By Mr. Staples:

Q. Of thefts of automobiles?

A. Yes. That is of various kinds of damage from theft. You understand that theft "covers a multitude of sins."

Q. Do you mean that it covers if a person steals a tire off the car?

[fol. 1022] A. Breaks a handle off the door, breaks the glass trying to get in the door, or takes the cap off the radiator.

Q. They are more or less picayune and insignificant, aren't they?

A. They amount to money.

Q. Is what you have had to say, generally speaking, with reference to the objectives and procedure, etc., relating to claims in casualty cases very greatly different from the procedure in fire loss cases?

A. Well, of course, it is an entirely different from of loss. A fire loss is a direct contract with the policyholder with an established, definite position to go on. There is not as much judgment, you might say, needed there, or investigation. There is a lot of judgment, too, but it is of a different type, you might say. On your automobile liability case, you can't adjust an automobile liability case until you write the check, and you are foolish if you do not—you just keep on investigating that thing. On your fire loss you go out and determine your loss and get rid of it.

Q. Does what you say with reference to the influence of the local agent on the claim and what he has to do apply substantially to fire loss claims as it does to the casualty claims, or not?

A. The same thing.

Q. Is there any appreciable difference in the service rendered by the local resident agent in these fire losses from those in the casualty losses?

A. From a claim viewpoint, I don't see any difference.

[fol. 1023] Q. There is no difference at all?

A. No.

Q. Then, there is no reason, from the standpoint of the claim agent, that you can think of, why there should be any difference made in the compensation of a local agent who countersigns a casualty policy from that of one who countersigns a fire policy, is there?

A. Now, of course, I don't know anything about compensation or what he earns his money on at all.

[fol. 1024] Q. There is no reason why there should be any distinction made between a local agent who countersigns a casualty policy and one who countersigns a fire policy?

A. So far as I am concerned, there isn't any difference. I have no control over the agent. That is his business.

Q. I believe you referred to an instance that happened in which a policyholder, say, of an automobile liability policy does not desire a claim settled for some reason, such as that he thinks he has a claim against the man with whom he had a collision, and you have a little difficulty with the assured or his representative, and then you get in touch and confer with the producing agent. I believe you mentioned cases of that kind.

A. Oh, yes, that happens occasionally; very rarely, but occasionally.

Q. Then you stated, I believe, that you also got in touch with the non-resident producer in similar cases?

A. Yes.

Q. Then there are other cases in which you sometimes, for other reasons, fail to get cooperation from the assured in your efforts to settle the case and in which you call in the local agent; I believe that is also true, is it not?

A. Mr. Staples, if you combined the two of them and made it on the basis of any misunderstanding with your policyholders, you would probably have half a dozen of them a year. In those cases we contact the agent of record and get the cooperation of the agent of record, regardless of where he is.

Q. You would have a much easier time, or your claim [fol. 1025] agent who travels over the State would have a very much easier time talking to a local producer and getting him in personal contact with the assured or with the assured's representative at the local plant than he would in trying to contact a non-resident assured through the mails, or through some Branch Office employee, or some non-resident claim man, and having the matter passed through two or three hands? Wouldn't you say it would be a little more difficult to get cooperation in that way than it would be by direct contact by word of mouth through the local agent?

A. No, I would say it would be better to get it through the Home Office of the concern, because the local man would only have so much authority, don't you see, and it would have to go to the Home Office.

Q. So, you think it is a good policy to go over the head of the local man who represents a plant in Virginia and appeal direct to the Home Office and just "short circuit" him, so to speak, and ignore him? You think that is a good policy, do you?

A. No, I would not *to* say to go over his head. I would say this, that we work with the local man, and if the local man does not understand the picture or the situation, then it is necessary to get your man straightened out, and the Home Office is the only one to straighten him out.

Q. Then, you think it would be better to bring pressure or coercion on him than to cooperate with him in a local way and get the picture from a personal standpoint?

[fol. 1026] A. I don't believe in bulldozing or coercion under any circumstances, but I think when there is a lack of understanding, there is one place to get that understanding, and that is from the boss.

Q. If necessary, I think that is correct, but you don't think it is best to go to the boss if you have some way of settling it with the local man yourself, do you?

A. I think if it is possible to bring the local man around, I can bring him around.

Q. Then, why do you call on the local agent if you can do it yourself?

A. I don't call on the local agent unless he is a producer.

Q. I am talking about the producer; I don't care whether you call him "producer" or "local resident agent" in cooperation with a non-resident producer.

A. Let us understand each other. You want to know why we ever take it up with the agent?

Q. No; my question is this: Would it not be more satisfactory, if you have a case in which you are unable to have a local Branch Manager, we will say, of a non-resident corporation with a Virginia branch, to give cooperation on the business, we will say, of a manufacturing of some sort, and if there was a local resident agent who had countersigned that company's policy and was in friendly contact with that manager and had built up a lot of good will from the nonpartisan and impartial standpoint of a resident insurance agent, might it not be helpful to you in getting the cooperation of this State Manager of that business, without your [fol. 1027] having to put coercion on that man by having a non-resident broker take it up with the president of the company and "put the screws" on the Virginia man from up north?

A. I don't consider it "putting the screws" on him or coercing him at all. I can only say that my experience has been, where these local representatives in the very, very few instances where it has happened, for example, not long ago,

we had a man where the policy was written through Cleveland, Ohio, and they had three men in Virginia and they had an automobile accident, and he was "hollering to high heaven" that he was going to get damages and he didn't want us to settle his case, and I wrote to the Cleveland office and said, "We can't knock any sense into this man. Maybe you can." I said, "Please see the man. Here is our file. Please write to the man." And they wrote to him and that was the end of the picture. I don't call that coercion. He made a proper explanation to him.

Q. What do you call it?

A. Making a proper explanation to him. He just did not understand it before.

Q. You think his boss can make him understand something better than you can?

A. I know he can, and I believe that if a local agent had had the same thing, he would have done the same thing I did. I don't think he would have had any more influence over him than I have.

Q. Maybe in that particular case. You can always bring out some case on almost anything where you would say that you think your method would prevail, but I am speaking [fol. 1028] of a general, friendly policy of good will to be built up in a State between the local insurance representatives in the State and the local industrial State Managers and representatives, and whether or not it would be a good policy for the State as a whole and for the industrial plant and the insurance company to have this cooperation without having to take everything to New York every time some sort of disagreement arises. I simply desired an expression of your opinion on that matter, and you seem to think they had better take it to New York, and, if that is your opinion, that is as far as you can go in the matter.

A. I would say that the misunderstandings are so few and far between that the only ones we take up would have to be taken up anyway.

[fol. 1029] T. A. Murphy, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you state your name and position and how long you have occupied that position?

A. My name is T. A. Murphy, Supervising Engineer, Travelers Insurance Company.

Q. Where are your headquarters and what is your territory?

A. Headquarters in Richmond; territory includes all of Virginia with the exception of about four counties in the northern portion; also includes approximately five counties in eastern North Carolina, two counties in Tennessee and about five counties in West Virginia. I have occupied my present position for sixteen years.

Q. What is your task, Mr. Murphy?

A. My duties are to direct the operations of seven other men in the making of inspections for the Travelers.

Q. What is the primary object of the making of those inspections?

A. The primary object is, of course, to improve the risks that we insure from the standpoint of safety, to see that they are properly classified as to the various operations conducted by the assured. That would primarily be the reason for the work.

Q. Your aim is to furnish assistance, in other words, in reducing losses of life, limb and property?

A. Yes, sir.

[fol. 1030] Q. And, in addition, you say you help see to the propriety of classifications. Is some of that latter work done in the making of the original classifications by inspections before the company goes on the risk or is it all limited to the inspection and checking of classifications already made where the company is actually on the risk?

A. In some cases we inspect the risk before the policy is issued, when it is considered as an applicant risk, but the majority of our inspections are made on risks that have already been written and we have been notified of the coverage.

Q. Do you come into contact with the assureds and their representatives frequently in the cases of risks requiring periodical inspections?

A. It is our purpose to contact the executives especially, and any of their supervisory employees that they might designate to deal with us, on every visit we make to the risk.

Q. What personnel do you have to assist you in your territory? Did you say seven men?

A. Seven beside myself.

Q. And you have some clerical assistants working under you and these men, don't you?

A. Two young ladies in Richmond and part time of one in Norfolk.

Q. Where do these seven men have their headquarters?

A. Five of them are here and one in Norfolk and one in Lynchburg.

[fol. 1031] Q. With what lines of casualty insurance does your department have to do?

A. We inspect in practically every line of casualty insurance, such as automobile fleets, public liability, compensation, elevators, plate glass, burglary, machinery. I guess that about covers the field.

Q. With what information do you first supply these employees when they come with the company?

A. A man who is new with the company, for several days and sometimes for a greater portion of two or three weeks, is given certain books, including manuals, and what we know as the Engineers' Handbook in order that he may become familiar with what might be called the mechanics of the company in the writing and handling of that line of insurance.

Q. And they are the same manuals that agents have, are they not?

A. They are the same manuals and I might explain that as far as the manuals containing the rates and things like that, we don't put so very much emphasis on that. We want him to be familiar with the make-up of the manual, but after he actually begins his work of inspections he is not expected to talk rates with an assured or with an agent either because most of his thought is going to be concentrated on the safety end of the work and getting compliance with the recommendations he submits, but this Engineers' Handbook that I refer to contains information that has been brought up to date by the company as a result of experience wherever they write business and includes in-
[fol. 1032] structions on the proper handling of the lines of insurance that we refer to. That information helps this man, for instance, if he visits a boiler risk, to know what to look for, what the company expects him to watch out for principally in the condition of the boiler and what to be careful about recommending in the way of repairs and how to handle recommendations after they have been submitted, and the importance of some recommendations over others.

Q. My understanding of this handbook, is that it is a loose-leaf book and it is from time to time being amended by revision matter which comes to take the place of old matter in it, and it is being supplemented by additional matter? Is that correct?

A. That is correct, yes.

Q. And that comes from the Home Office at Hartford, the engineering department?

A. That is right.

Q. To avoid introducing this book in evidence, at the same time to have a description of it in the record, I will ask you does it contain a section devoted to refrigerating systems and the various hazards thereof and their variation with the various kinds of refrigerating systems?

A. That is correct.

Q. For instance, there is a gas or asphyxiation hazard in connection with some refrigeration that wouldn't be present with another type, is there not?

A. That is correct.

Q. Is there a large section that deals similarly with steam turbines?

A. That is right.

[fol. 1033] Q. And another with wheels of all kinds?

A. Yes, it describes the construction of wheels and suggests certain sketches and things like that that should be made.

Q. Does it also deal with various kinds of automobile fleets and the special hazards to which the units of these varying kinds of fleets are subject and the best methods of creating accident prevention organizations and successfully carrying on accident prevention activities?

A. Yes, sir.

Q. Is there another section dealing with burglary risks and the means of lessening the losses from burglary?

A. Yes, that is right.

Q. And another with reference to plants where different kinds of chemicals are used and the hazards to persons and property from the various kinds of chemicals and their various uses and the various forms of protection against danger by the various chemicals?

A. That is right.

Q. Do others deal with road construction, excavations, caisson, cofferdams, tunneling, pile-driving, structural iron

and steel, wrecking, and their various hazards, with particular reference to the coverage of contractors?

A. That is right.

Q. Are there others dealing with quarries, glass insurance and stevedoring?

A. Yes, sir.

Q. Does this book contain instructions with regard to the making of reports and recommendations, as well as with [fol. 1034] regard to the method of procedure in the making of inspections?

A. Yes, sir.

Q. These people that you are talking about are engaged exclusively in their work about which you have been speaking, or do they sell insurance or work in the real estate business or in banks and that sort of thing at the same time they work in your engineering department?

A. No, their work is exclusively—I think I could say that—in the work of inspection. They don't do any work outside of what the Travelers requires but they don't do any actual selling of insurance.

Q. In what manner are they compensated—by salaries or commissions or how?

A. Salaries alone.

Q. You said just now that sometimes your connection with a risk started before the company went on the risk. How does this connection arise at a time before the company goes on the risk?

A. Well, an agent might contact some prospect for a certain line of insurance and if he is a branch office agent or an agent out in the field he will take the matter up with the local branch office and they will give us requests for the inspection of the risk. Sometimes a policy is issued before that request is received. Other times we get requests from our Home Office to make certain inspections.

Q. You get these requests from the Tabb agency as well as from the branch office?

A. Yes, sir.

Q. Do you get them from the Home Office or from branch offices other than the Virginia one for inspection of situa- [fol. 1035] tions in Virginia before the company goes on the risk?

A. We get them but we don't get them direct from the branch office. They have to be routed now through the Home Office.

Q. Having been requested to inspect a risk and having caused it to be inspected, what is then done?

A. Well, the first thing, of course, in most cases is—at least eighty percent of the cases—a report is written. There will be some cases where a report is not considered necessary, depending on the condition of the risk. By a report I mean a complete report describing the operations. We might make a notation on the back of a card like this, for instance, that it was inspected on such a date and no further inspection necessary, conditions satisfactory, but in the large majority of cases the report is written and submitted to the company.

Q. Supposing the request for the inspection comes from a General Agent not reporting to the Richmond branch office, on what form do you make your report and what number of copies are made of it and to whom do you give these copies?

A. The form would depend on the kind of insurance being written. An elevator would have its form and plate glass its form and boiler another form.

Q. How many copies of the report are made?

A. In the case of a General Agent like Mr. Tabb's office, we are permitted to give them two copies of any report that we might make.

Q. And is there any other copy of the report given to anybody?

A. One copy to our Home Office.

Q. Under the regulations as to what the General Agent [fol. 1036] will do with his two copies of the report, I believe one of them is for his retention or instruction, or whatever he wants to do with it. What do the regulations contemplate that he shall do with the second copy that he gets?

A. We give him two copies, one to be sent to the underwriting division at our Home Office.

Q. And your third copy that you send to the Home Office goes to the Engineering Division?

A. That is right, yes.

Q. If the request for the inspection comes from a branch office, the producer being an agent reporting to that branch office instead of a General Agent reporting to the Home Office, what do you do with the two copies that you said you gave to the General Agent where the order came from him?

A. If the order comes from the branch office agent it may be a risk known as Branch Office Underwritten or it may be

risk known as Home Office Underwritten, the difference in he two being the type of operation and the amount of premium. If it comes in the class of Branch Office Underwritten we give the branch office two copies and keep one or our own file. If conditions are satisfactory and the risk s considered insurable by our engineer, and there is no question about insurability, the branch office may retain both copies, but if, for some reason, they hesitate about writing he risk without referring to the Home Office, they have the other copy to send to the underwriting division at the Home Office. If it is a risk that comes within what is known as a Home Office Underwritten risk but the request comes from he branch office, we give the branch office two copies. In his case we send one copy to the Home Office Engineering Division and keep one copy of the report in our file.

[fol. 1037] Q. Is it a relatively small percentage or is it a relatively large percentage of the contracts covering in your territory in connection with which you are called on to make an inspection before the contract is issued?

A. Small.

Q. Is a producer outside of Virginia, who is trying to write a risk covering in Virginia, entitled to procure an inspection before the company goes on the risk just as if he resided in the territory of coverage?

A. Yes.

Q. How does that request come to you?

A. That comes to us through our Home Office.

Q. In that case you send the reports to the Home Office for their attention and transmission to the producer?

A. Yes.

Q. Where you have not inspected a risk before a contract is issued, how do you come to inspect it afterwards?

A. We are furnished with information, if it is written in a branch office, from the branch office or from the Home Office, that the risk has been written and requesting an inspection.

Q. If it is written by a general agent where do you get the information that it is written?

A. Well, in some cases we get it direct from the general agent. In other cases the agent simply writes it and the first we know of it the Home Office informs us that it has been written.

Q. Do you get the information in due course from the

[fol. 1038] Home Office, even though the local agent may have informally told you he had written it?

A. Yes, we get that.

Q. What division at the Home Office decides whether the risk is of a character requiring inspection service?

A. That is decided jointly by the Underwriting and Inspection Divisions.

Q. Am I correct that no effort is made to inspect single automobile risks? For instance, if I take a policy on the car that my family drives, would you get a card record like this covering that risk?

A. We wouldn't get a record like that. Occasionally we will look at some special risk. It might be a risk that has been reported that the assured is a person who is crippled and there is some question as to whether it should be covered or not and, if it is a- extreme case, they will ask us to interview the man and get some general information about his operating ability.

Q. But there are certain coverage contracts, as I understand, under which, according to the general practice, no inspection is thought necessary and of those you have no record unless a peculiar occasion arises when an inspection is desired?

A. That is correct.

Q. You don't make inspections habitually, for instance, as to health and accident insurance?

A. No, sir.

Q. After the original inspection and measurement, and so [fol. 1039] forth, you don't inspect plate glass lines as a rule do you?

A. No.

Q. How about residence burglary policies?

A. We don't reinspect that.

Q. Do you inspect residence burglary policies at all?

A. Occasionally we do, yes, sir.

Q. But not as a practice?

A. No, sir.

Q. What other classes of risks in connection with which do you get these records, as a matter of course?

A. We get that, as the card itself will indicate, on compensation, public liability, automobile fleet and elevators. That about covers it. They could use the card for other coverages by making some notation there but the ones I refer to are the ones we get it on.

Q. Do you get that card also on boiler risks?

A. We do get this make-up but there is different information on there. We have a card like that for boilers. If you would want one I could get that but it is the same size only everything on there refers to boilers and machinery.

Q. Where business is produced outside of the state and covers in Virginia and consists of compensation, automobile fleet, elevator, public liability and boiler and machinery risks, do you get these cards and make the inspections and make the reports on the appropriate ones of the forms which you have filed this morning as report forms, in due course?

[fol. 1040] A. Yes, sir.

Q. I believe there is a variation in the number of copies of the report which you at times send to the Home Office, depending upon the expectancy of the Home Office as to how many persons it will have to deliver copies to, is there not?

A. That is correct.

Q. About this monthly card on a particular risk—is that put in a file that has tabs for the various months and in that division of the file referring to the month in which you plan to make the next inspection of the risk? Is that the idea?

A. The card is marked for visits, for instance, in the third, sixth, ninth and twelfth month, and if we have been there in December, we ordinarily wouldn't go back there until March and the card is put under the March tab.

Q. When you get these cards do you wait for the producing agent or somebody else to ask you to make an inspection or do you go ahead and make it?

A. We make the inspection. We set up the frequency in this office.

Q. Does the frequency of your inspections, constitute an arbitrary matter or is that frequency affected by loss experience?

A. It is not always affected by loss experience. It is affected principally by the kind of an operation that is being conducted, even though the experience might be good. Might be a quarry where we would have to keep very close watch on the handling and stowing of explosives or it might be a contracting job like some that are going on around Richmond now, that you might visit daily, even though there are [fol. 1041] no accidents, to watch the progress of the work

and because it is changing from day to day, but the frequency of inspection in, I would say, at least seventy-five or eighty percent of the cases is practically set up arbitrarily and changed as conditions might require.

Q. What would there be about an accident frequency experience that would make you change the card and how would a good or bad accident frequency experience cause you to change your card?

A. If the accident frequency was high, even though the losses had not themselves been heavy, we would look upon that accident frequency as possibly gradually developing costly accidents and we would then set up a higher frequency of visits for the time being, at least, until we had made an effort to cut down the number of small accidents that were being reported, or if the frequency was good and the operations were not considered unusually hazardous, we could then and would be glad to cut down the frequency of visits.

Q. When accident frequency experience produces inspections to determine its cause and you have made an inspection and think you have determined its cause, what do you do?

A. We take the matter up with the highest possible authority and bring to their attention what we have decided is producing the accidents and; depending on what the condition is, try to persuade them to do what is necessary to bring down this frequency. The action might be very simple or it might go into the question of forming a safety organization and meeting of employees and things like that, or it may be some physical condition in the plant that would need changing.

[fol. 1042] Q. Do those recommendations ever include recommendations for changes in the type of material which is being used, such as machines or the ways in which particular tasks are being performed by the workmen or the characteristics of the workmen who are performing certain tasks?

A. Yes, sir.

Q. Do they ever involve the expenditure of any considerable sum of money?

A. Yes, sir.

Q. Having made an inspection and made a report, including recommendations, is that the end of your connection with it?

A. No, sir.

Q. What do you do after you have reported that changes should be made?

A. We follow the recommendations up and, in most cases, we try to get an understanding with the assured, at the time of the inspection, when we can expect the recommendations to be complied with, or at least, some of them, the more important ones, and if he says thirty days, and we think it is necessary, we will go back in thirty days to see what has been done.

Q. What do you do if he hasn't done what you think he should have done within what you regard as a reasonable time in the light of his promises?

A. Well, that depends on circumstances too. We may be convinced that the assured didn't have the opportunity or something may have occurred that he couldn't have done it, but if we felt he was sincere we would then set up another date for further compliance. In other cases, if we are convinced that there is no intention on the part of the assured to comply with the recommendations, we will, in some cases, [fol. 1043] recommend immediately to the Home Office cancellation of the risk. In other cases we would take the matter up with the agent who has written the business with the idea of calling it to his attention so that the risk might be salvaged, if possible, with his influence with the assured.

Q. Suppose a case like this, where you have done the best you could to get your recommendations complied with and you come to the conclusion that the local representatives of the assured are not giving you proper cooperation and you decide you will see what the producing agent can do to help you and you find that the risk was produced by a producing agent outside of Virginia, what do you do then?

A. We refer the whole matter to our Home Office. We don't correspond directly with the outside producing agent.

Q. And what is the procedure then?

A. The Home Office takes the matter up with the producer, or as far as I know, may take it up direct with the Home Office of the assured.

Q. In your experience do you find that you get any better results when local representatives fail to cooperate with you if there is a resident agent or do you find that you get equally as good results if the producing agent is a non-resident when you make complaints of lack of cooperation?

A. I don't recall any risks, with one exception, where a resident agent—I mean by that an agent residing where the

operations are carried on—was gotten in contact with. In other words, all of our dealings have been, on those risks written outside of the state, directly with the Home Office.

Q. After you make a complaint of lack of cooperation and you complain to the Home Office, do you usually find that you get that cooperation from the local representative of the assured?

[fol. 1044] A. Yes.

Q. What difference is there in getting that cooperation between cases produced outside of the State of Virginia and cases produced inside of the State of Virginia? Is there any difference, as far as you know?

A. Not that I know of. I might mention at that point, from our standpoint, most of these risks that we do contact that are written outside of the state are ones that have also their own inspection division and I imagine a claim division too. I have in mind a risk right here in Richmond that their safety literature and all comes out of the New York office after going over jointly by our inspection division and their inspection division. The reason I mention that is because the result of that is there is very little trouble in getting that cooperation.

Q. In the case of the big workmen's compensation risks covering in Virginia, would you say that it is the custom to have a man in the plant materially concerned as a part of his duties with safety or would you consider that it is the custom not to have such a man in these big plants?

A. It is the custom to have one.

Q. Do you find that man a good man for you to cooperate with or a bad man for you to cooperate with?

A. He is usually a very good man.

Q. Do you sometimes make reinspections at the request of the Home Office or at the request of producing agents at a time sooner than, in the absence of such a request, you would have made a reinspection?

A. Yes.

Q. Could you illustrate the instances when you do this as a result of requests by the Home Office?

[fol. 1045] A. I have in mind one that was made recently. The Rating Bureau of Virginia also makes inspections, principally, I think, for classification purposes and in the inspection of this risk they reported that another classification, which carried a higher rate than was shown, should apply there and the Home Office, through our branch office

in that particular case, requested us to make a reinspection of the risk.

Q. To change the classification?

A. To change the classification, yes, sir.

Q. In that particular case did you find out what happened to it, whether the criticism was justified or not?

A. Yes, it was. At least, it was decided that the other classification should apply.

Q. And the Bureau's position was that you were giving that man a better rate than he was entitled to?

A. Yes. Then we are requested by the agents occasionally to make a reinspection in between the regular set-ups.

Q. Can you remember enough of those cases to say how recently you have had such reinspection requests from any agent?

A. I would say we have had two or three requests at least within the last two or three months.

Q. Do you remember why they wanted you to make reinspections?

A. In one particular case there was some competition on the business and the agent wanted to be sure that he had the risk properly written and that the coverage was all that the assured could expect from any company.

Q. Tell about the other case?

A. The other case was where the agent learned there were [fol. 1046] going to be some changes in the assured's property and suggested to the assured that we be asked through him to confer with the assured regarding the advisability of the changes and whether it was the best change that probably could be made.

Q. When these requests come from the Home Office do you know whether they have resulted from producers wanting them made or whether the Home Office wanted a reinspection made of its own motion?

A. The information we get is usually very complete, telling us why the inspection is being requested. That would say whether it was something the agent had brought up or whether information was obtained from some other source by the Home Office.

Q. Is it just in cases where the agent is in the same town with the plant or is it in other cases that you get these requests, as well as those whether the agent is right at the locality of coverage?

A. It isn't necessarily where the agent is. It comes from anywhere.

Q. Do you get these requests from the branch office sometimes too?

A. Yes.

Q. How do you know that this Bureau makes these classification checks? The reason I ask you that is one of the witnesses in this case for the defendants said it did not do it.

A. I know they do it because I see their report, you might say, criticizing or calling attention to the improper classification of the risks. That is handed us to read so that we will know just why we are going there.

Q. Suppose that a fleet automobile policy is issued and that in that policy the cars are not correctly rated or de- [fol. 1047] scribed; is there any routine under which that would be discovered by your department?

A. Yes, sir, especially if the risk is a large one. By that I mean cars from fifteen up in number. In those cases we are almost invariably furnished with a list of the equipment and we check that list with the actual equipment that we find at the time of the inspection and one of the reasons for that is that it might be a month in some cases before we get to it and some equipment may have been sold and some new equipment purchased. We even go to the extent of checking motor numbers.

Q. Under your routine, do you ever inspect, without special request from the Home Office or a producing agent, fleets under fifteen units?

A. Yes, sir.

Q. What is the difference—the quickness with which you get around to it?

A. No. It might be a type of risk like a coal and wood yard that only has four or five trucks that we don't usually consider so good—the type of driver and the like of that. We want to see them as quickly as we can.

Q. You inspect all fleet risks ultimately, regardless of size, assuming they come within the classification of "fleet".

A. Not in all cases. If it is a small risk, three or four cars, we may know enough about it, if it is locally situated, to not even bother about inspecting it except if we have the compensation coverage there or boiler, or something like that, we may come in contact with it. Of course, if accidents are being reported from it, then we will check into that.

Q. Please say in what ways, if any, the work of your department is made more valuable to assureds, according to your experience, by having the producer in the locality [fol. 1048] of the coverage rather than a man not in the locality of the coverage?

A. Well, if it is a risk locally written, the agent on the risk can be of some assistance to us but if it is a risk written outside of the state, then we feel and, in fact, I think our experience has proven that we get very complete cooperation from the agent or broker, whoever it may be, outside of the state, where the headquarters of the risk are located.

Q. Am I to understand that as far as the value of your work to the assured is concerned, it doesn't make any difference whether the producing agent is a resident or non-resident of the locality as long as he has the attributes and relationship to the assured of having produced the business or am I to understand the contrary?

A. It is my opinion that regardless of where the agent is located, if he has influence enough to write the business, he has influence enough to render us the assistance we need.

Q. Under your practice does a non-resident producer get the benefit of your instructions and reports just as a resident producer gets that benefit?

A. Yes, sir.

Q. I want you to tell me now what you do along the lines of talking to assureds in your territory with respect to safety matters and talking to the drivers of their cars and the operators of their machinery, elevators, engines, and so forth, and what it is that makes you talk to these assureds and their operators and drivers.

A. If it is a new risk that, for instance, we don't know much about, we have no past experience except what we have [fol. 1049] gotten in a roundabout way, and we try to give the assured the benefit of our experience on similar risks.

Q. Suppose the Standard Oil Company has a two hundred unit fleet here in Virginia and, if you learn your company is covering it, what is the first thing you do when you start out to help that assured in respect of safety matters?

A. If the risk you refer to was written with the Travelers, they would inform us before we ever went over there who would be the man to contact. That information would be given our Home Office by the Home Office of the assured. We would contact this man, if he is in Richmond, usually

by telephone, and make an appointment that would be convenient for both and tell him what we wanted to do, that we wanted to assemble his drivers or we wanted to see as many of these trucks as could be gotten in and, of course, if there are two hundred it is hardly likely that there will be two hundred there at one time, but we want to see them all as quickly as we can, and then we go there.

Q. When you talk to him do you ordinarily just tell him things you want him to let you tell the drivers or tell him to let you see the trucks or do you have any general talk with him about what your aims and objects are?

A. Well, the probability in the case you cite there would be that we would go to this risk, the usual procedure, and contact the man personally and tell him what our procedure is in handling that type of risk and then find out when these trucks can be assembled and whether we would have to talk to these drivers at night after they were off duty or [fol. 1050] when, but that would finally be agreed upon and then we could go ahead with the inspection along that line.

Q. Do you ask that man any questions, or is that necessary, about his methods then in use?

A. No, we don't usually ask him how he is doing it because he is going to want to do it any way the way he thinks is best and we tell him the way we expect him to do it.

Q. Do you do that of your own motion or does somebody have to tell you to do that?

A. It is just a general understanding with a risk of that size that certain things are going to be done—meetings of chauffeurs and observation of their operations on the street. We will trail them.

Q. Take a plant instead of a fleet. When you go over there to see that plant as a new risk, do you go through the plant?

A. Yes, sir.

Q. Who usually goes with you?

A. In some cases it might be the president of the company. In other cases they may already have a safety organization there with some man as chairman of the safety committee and he will probably be the one, or some foreman.

Q. On some risks the Master Mechanic would be the proper one?

A. Yes. In other words, they won't take a man off a task he has got every day and put him on it. It is a man who is in more or less an executive position.

Q. Is it a frequent thing or an infrequent thing that you [fol. 1051] make these safety talks because somebody suggests to you the propriety of it or requests you to make them?

A. In most cases it is because we feel that they should be made. There are cases where we are requested to make them by the assured or the agent.

Q. Would you call those occasionally or would you call them substantial in number?

A. No, I would say occasionally.

Q. In these requests where other people are asking for them, who are the people who ask for them?

A. Sometimes it is the assured and sometimes it is the agent.

Q. When you refer to the agent, have you any particular agent in mind as the agent? What agent are you speaking of?

A. Well, Mr. Tabb's office requests them and recently we had an agent in another part of the state request them but that is very very seldom.

Q. What is the relationship of the agent who does that asking to the assured?

A. He is the agent on the risk.

Q. What do you mean by on the risk?

A. He is the man who has written the business.

Q. Is it usual for the agent to come to the safety meetings?

A. Yes. We try to get them there ourselves.

Q. How many stock companies, admitted to Virginia, do you know of beside your own which have salaried engineering personnel with headquarters in Virginia?

A. There are several here that do have men.

Q. If you can't remember them, I will ask you about some [fol. 1052] particular ones. Does the Fidelty & Casualty Company of New York have them?

A. Yes, the F. & C. has them.

Q. How about the Aetna?

A. Aetna has them and Employers have them.

Q. How about Hartford Steam Boiler?

A. Yes, they have a man here.

Q. How about the Globe?

A. The Globe have a man here.

Q. How about the American Mutual?

A. American and Liberty both have men here.

Q. American Mutual and Liberty Mutual?

A. Yes.

Q. What about the Lumbermen's? Do you happen to know about it?

A. I don't know. I know they did have a man but I don't know now. That has been a couple of years ago.

Q. You are not able, I suppose, to keep up very accurately with what they are doing, are you?

A. No, sir, I don't try to.

Q. Can you say how many more than those I have mentioned have salaried engineering personnel with headquarters in Virginia?

A. I don't know of any others.

Q. Where do the engineers of companies, which do not have salaried engineering personnel with headquarters in Virginia, come from when they come into Virginia to do engineering work for those companies?

[fol. 1053] A. I know that the Maryland did come from Baltimore and also the U. S. F. & G. About any others, I don't know.

Q. Do you know whether some of the companies employ independent engineers residing in Richmond on a fee basis?

A. Yes, sir.

Q. Do you know whether any of these companies have engineers with a territory larger than Virginia, say, involving several states?

A. I have been told by the engineer himself that he covered more than one state.

Q. Having reference to these companies with salaried engineering departments with headquarters in Virginia, can [fol. 1054] you say whether they attempt to do different work from the work that your department tries to do for your company or whether they try to do the same kind of work?

A. From my conversations with them and association at times, they are endeavoring to do the same kind of work that we do. The procedure might be a little different.

Q. Do they come from the same walks of life and from groups with the same general kind of experience as your engineers come from?

A. I can answer that by saying that I personally know of several of these men, some of whom have worked with the Travelers, and others that I have met in the course of our

work and I would say that they do come from the stratum that we do.

Q. You find their backgrounds are about the same as the backgrounds of your men?

A. Yes.

Q. Do you understand that these departments function generally as your department functions or that they function differently?

A. In answer to the question I would say that in what might be called talking shop, when they are not on the job, and even sometimes when they are on the job, I have learned that the use of the general procedure is practically the same. I get that from a man who is with our company who was formerly with another company and I get it from men who used to be with us and who are now with other companies.

Q. Have you got a taxicab risk?

A. Yes, sir.

Q. How many units are there?

A. I would say roughly forty-or forty-five.

[fol. 1055] Q. And how do you get them together?

A. We notify the assured some little while before we come that we are going to be in this town and he has actually taken all of his cabs off the street and had the meeting in his garage. That is at night.

Q. How long does it take a man to inspect a unit in a fleet if it is conveniently located and if he is going to inspect the brakes and the windshield and rear view mirrors and condition of the stop-lights and not going to do anything else?

A. I would say if conditions were favorable to do what you said, around about twelve minutes for each unit.

Q. What do you inspect for when you inspect a fleet? Do you inspect just the brakes, windshield, rear-view mirrors and stop lights, or other things as well?

A. We get information on lots of other points than that.

Q. Are you interested in the type of tire with which the units are equipped or merely as to the condition?

A. We are interested, depending on the kind of fleet. If it is a fleet, for instance, hauling heavy objects like lumber, we want to see that the heavy duty tire and not just an ordinary tire is on there like you find on a bakery truck or something like that.

Q. What about other things? Are you interested at all in the steering gears on the cars?

A. To make it clear and as brief as I can, if we get a fleet risk of any size, we are interested in quite a number of things—for instance, the type of driver, to begin with, and the kind of maintenance that this fleet gets, whether that is done by the assured himself with competent mechanics or [fol. 1056] whether he contracts it out to some local repair shop and whether these chauffeurs, to get back to them, are young fellows or whether they have gotten to an age where they can exercise some reason, lots of times whether they are married or single, what their wages are, and we are interested in the labor turnover of these chauffeurs.

Q. How about the hours of work?

A. I was going to come to that—how long a run they are supposed to travel on, whether they have any helpers with them and if they have any layovers. We have actually put clocks in these cars to see how long they did lay over, how often they stopped and where they stopped, and we are interested in (I am speaking of a fleet now of some consequence) the general conditions around there, whether the cars show a number of tires have been worn, and we try to find out whether the man has any schedule for replacing tires; whether they have actually shown considerable wear or not, if they had served a certain number of miles, we are interested in the changing of them, and the general appearance of the cars, regardless of what the brakes might do. If they show they have fenders bumped or headlights smashed and the like of that; it would give some idea that the fleet is probably not what we would want. Then, of course, we are interested in the brakes, steering gears, principally, and the lights and that about covers the physical conditions.

Q. Is there any variation in the mechanical arrangements or any variation in the condition of the mechanical arrangements by which the tractor and the trailer are joined together that you are interested in?

A. Of course, we accept equipment that is built by recognized builders of that kind of equipment as being com- [fol. 1057] petent to know what they are building and unless that particular part where they join with a kingpin shows considerable wear, we are not concerned so much about the exact design.

Q. Are you interested at all in the body construction of the units with reference to the use to which they are being put?

A. Yes, sir, very much.

Q. What are the points of safety involved there?

A. It might be a truck that is hauling lumber without the proper number or size of stanchions or uprights that they are supposed to use to keep that lumber from sliding off, or it might be a light truck that is being loaded with heavy loads and the body wouldn't be able to retain them if the truck would get out of control even temporarily, and the load would shift over like I saw one do today, and the general make-up. There isn't any one particular thing that would stand out in front of the others.

Q. Do you consider that experience, as well as mechanical knowledge, is necessary to efficiently inspect one of these fleets or do you think a fellow that is working six or eight hours a day selling insurance or practicinng law or practicing medicine could go out and make those inspections efficiently?

A. I don't think he could. I think the experience of the inspector or engineer who has had access to files showing the different kinds of accidents that have already been reported from automobile fleet risks and also information that is furnished him by his Home Office, certainly equips him to make a better inspection of the automobile fleets than a man who is engaged principally in some other line of business.

Q. Do you pay attention, when you make those inquiries about an assured's methods, as to whether he pays any bonus compensation for good safety records?

A. Yes, sir, that is found in that report that we submit, [fol. 1058] whether that condition exists there, whether safe drivers are recompensed by bonus or some other way.

Q. How long would it take you to talk with a driver and find out what you need to know about him as an individual or about the conditions under which he works in order to meet the requirements of your inspection and reporting duty?

A. In order to be fair to the driver and also to the company, I would say that anyone who contacted one of these men, with the idea of trying to get that information, couldn't very well do it in less than twenty minutes at the least because he couldn't come right out and bring up the subject bluntly with him. He would have to kind of get his confidence in a way and I am sure it wouldn't be done satisfactorily in less than twenty minutes. I don't mean by that that every driver in the fleet would have to be talked to

twenty minutes but I mean you can get the idea as to the general set-up of them by talking to a few of them.

Q. Suppose a fleet is reasonably accessible in the vicinity of Richmond so that you can get to it in a half hour or so, and it is a twenty-five-car fleet, how long would it take one of your men to do what properly should be done to inspect that fleet, leaving out the time it takes him to get there and back, or putting that in, either one you want?

A. Of course, there are different types too. I have in mind a school bus risk of thirty to sixty busses. That type of risk requires certain attention that another kind of risk wouldn't have, but taking them on the average, I don't believe any of our men could properly (I am referring now to first inspection principally) get the information that he is expected to get in less than twenty-five minutes on each unit.

[fol. 1059] Q. Is there any way you could give the Court a picture of the relative time that is necessary for a reinspection?

A. I would say that on a reinspection a man who goes there has his last report with him and he doesn't have to get all the information he got the first time. On a school bus risk, for instance, we would be interested in finding out if there has been any damage done to the bus by the children, for instance, like breaking some of the glass that somebody might have his hand cut on, or the tires have been allowed to get down to the point where they become dangerous because in lots of those school bus risks the school bus doesn't belong to the School Board, it belongs to some man who has a lease on it and they have a contract with him and if they don't watch it this man will run his tires until his tires about run off, but the average reinspection of, say, a twenty-five school bus risk doesn't compare at all with the first inspection.

Q. It takes much less time?

A. Much less, yes, sir.

Q. Is it your understanding that inspections by other engineering departments are about the same as yours in inspecting fleets or that they proceed along substantially different lines?

A. As I said sometime back, what I know about their procedure is what I learned from talking to the men at meetings of some little society they may have and I can safely say that the procedure is generally the same.

Q. Do you think any substantial value would result to your assureds from what your men happen to see on the street by accident in the way of things that they notice are wrong and which they could recommend to be corrected or is that a rare thing when that happens?

A. We have what is known as observation inspection and [fol. 1060] trailing inspection and I think that we comment on that each month to the Home Office.

Q. When you have trailing inspection or observation inspection, is the inspection just what you happen to see or do you go out that day with the idea of stationing yourself where you can see?

A. We go out to watch for that.

Q. Is that a right long job? For instance, if I am running a Greyhound bus from here to Washington and you are going to trail me up there, it will take you just as long as it would take me? It would be an engineer's whole day, wouldn't it?

A. Of course, in a case like that it is done in connection with a trip we might have planned ourselves from here to Washington or Lynchburg and then if we want to trail them we would set our schedule to suit theirs, but we can start out with some definite purpose in mind, like with a local fleet, and go to where this truck is going to leave and follow behind him for a reasonable length of time, maybe a mile or two miles around town here at certain intersections.

Q. You say you frequently do that as a part of your inspection?

A. Yes, sir.

Q. I want to ask you to speak about road contractors' compensation insurance. When do you usually first get to the site of the job?

A. We try, if possible, to get on this job in contact with the assured at least before the work starts.

Q. Does your company at its branch offices have facilities for watching for the letting of bids on big jobs and keeping up with what jobs are going to be let, and so on?

A. I couldn't answer that definitely, although I am positive they do.

[fol. 1061] Q. Do you ever have an opportunity to observe whether that is true as an inference from the fact that when you get to the site of one of these proposed jobs there is no sign there yet of the job?

A. I know of cases where we had the insurance and this contractor has bid on some new work. A notice in the paper will attract my own attention and I know it has attracted the attention of the branch office because they have immediately commented about seeing so and so has been bidding on this job or has been given the contract.

Q. Would that be a man on whom you carry blanket compensation insurance?

A. Yes.

Q. And you know pretty well you are going to get all of his compensation coverage?

A. Yes, sir.

Q. When you have paid your inspection visit to the site, does anything take place in the way of conversation between you and the contractor as to when he is going to start work and the methods he is going to employ?

A. Yes, sir.

Q. What are you interested in about his methods, what particular type of his work?

A. We might find, if he is building a road, that it is going through a section that will require considerable blasting, removing of stones or trees or things like that, or stumps, and we are going to want to know then how he will handle these explosives in the way of stowing them and if he has an experienced man who is going to do the blasting, what precautions he is going to take to prevent the public from driving into a blast about the time it is set off, and what I was going to say is covered by the experience of the man [fol. 1062] who is going to do it. He would know how he is going to handle his explosives and set off this dynamite, but in addition to that, we would want to know the type of labor he is going to use, whether it is experienced. If he is going through a section that will require right much breaking of rock after the blasting, we want to know whether he is going to use goggles on his men. There is considerable we would want to know in a job like that.

Q. Are you interested, in connection with a liability coverage on such a risk, in the traffic conditions in the vicinity of the job?

A. Yes.

Q. Grades and things of that sort?

A. Yes.

Q. What bearing would it have whether the job is on a

main highway or on a rural route from the standpoint of public liability insurance?

A. Of course, it would be a much better risk in an isolated section than it would be on No. 1 highway.

Q. Would there be any variation in the provision made for safeguarding the public dependent on that?

A. None at all.

Q. Do you undertake to safeguard the public whether the members of it are going to be few in number or large in number?

A. Public and property both.

Q. Is it your experience that most of these contractors have blanket compensation and liability coverage when they are non-residents of the state of Virginia, doing work in Virginia, or do they let out each piece of coverage separately?

A. From all the information that I get, indicated by the [fol. 1063] information that is furnished by the Home Office, they are covered by blanket coverage.

Q. Suppose I am the producing agent of some of this compensation or liability business and I never say a word to Mr. Murphy about one of these jobs; will the result of that be that Mr. Murphy won't get to the job to inspect it while it is going on?

A. No, sir.

Q. How will you get there if I don't ask you?

A. Of course, we have gotten there the first time and from that time on our schedule is set up, as I explained before, and depending on the operating conditions as to whether it is once a month or once a week, in some cases, or every two months, and the size of the job.

Q. When you go on these jobs do you just walk around and see what you want to see or do you also talk to the people on the job or what is your usual routine?

A. We will have our plans made before we go there, of course. If there have been accidents we will bring them up very soon after our getting there with the superintendent in charge of the job or, if it is something we notice, we don't necessarily contact him right away. We probably think best not to do it all the time. If it is a road job, extending probably a mile and a half in length, we like to see what is going on before we will see him, but we will see him before we leave there.

Q. How much time do you usually spend getting to one of these road jobs and doing all that you think is required, say a mile and a half road job?

A. We have traveled as much as forty or fifty miles to get to the job without making any other inspections and we will stay on the job sometimes half an hour and sometimes three hours.

[fol. 1064] Q. Having reference to inspection departments in the casualty and surety companies as they operate in states other than Virginia, and not having any reference to the way those departments operate in Virginia, I ask you do you know any men who have worked here in Virginia and gone away and worked in other states and come back?

A. For the Travelers, yes, sir.

Q. Do you know whether or not they work in the same way in states other than Virginia as they do in Virginia or whether the methods vary substantially in the different states in doing this inspection and engineering work for the company?

A. I can say that the procedure, so far as the Travelers is concerned, is identical to the smallest detail in every state or any place where they have an office.

Q. Is my understanding correct that in a metropolitan area like New York City the personnel of the engineering department of the branch office there would be much greater than it would be in a smaller area like the Richmond area?

A. Yes, sir.

Q. Would there also be areas throughout the United States where much less personnel is required in your state engineering department than in the Virginia one?

A. Yes, sir.

Q. Would it be fair to say that the personnel is adequate, in the opinion of the engineering department of the company to do the work that is to be done?

A. Yes, sir.

[fol. 1065] Cross-examination.

By Mr. Staples:

Q. Do you have the title of Manager of the Engineering Department?

A. No, sir, Supervising Engineer.

Q. Do you have control over the people in that department?

A. Yes, sir.

Q. You have spoken about the inspection work of your department prior to the issuance of policies and the work done by the resident agents in that connection. Now, these delays to the underwriting men in the Branch Manager's office which occur from inability of the Engineering Department to promptly get their inspectors on the job, would be very much alleviated, would they not, or remedied, or are they not very much remedied, by the services of local agents, where the risk originates in this State, in doing this work themselves and thus avoiding this underwriting delay on account of the inspection service not being able to do their work promptly?

A. In answer to that, Mr. Staples, I will say that there is no delay. If the risk is one that is of minor importance, the Branch Office's underwriting division has the authority to write immediately upon satisfactory answers to any inquiry they might make from the agent, so we do not necessarily go to see the risk—that is, our department—before the policy is written and issued. If it is a type or risk which is considered hazardous or extra-hazardous, then it is just a question where they are going to wait until the inspection is made, regardless of the size of the risk.

Q. I think the cases referred to by the Branch Manager were cases in which it was considered that the inspection [fol. 1066] should be made before the policy would be issued; there was some question which arose in connection with it and which it was desired to have removed by the inspection, and this delay of the Inspection Department in not being able to render the service promptly was said to occasion the holding up of the writing of these policies, and my question is, if that is true, when there was a local policy written by local resident agent, would not that agent himself usually supply the information which is called for by the Engineering Department, or at least in a large number of cases, unless there were some great technicality involved in it?

A. Well, if the case was such that a delay was occasioned in a man not getting there in the ordinary course of his moving about the territory, then the company would feel that the risk was one that they could either let somebody else write or let the assured or the agent wait until the inspection could be made, and that occurs frequently, or, I will say, several times during the course of a year and will prob-

ably average once a month, but if the risk is big enough to make it worth while for the company to write it, we will not have any unnecessary delay in getting to it. Now, I will make that probably a little clearer: If we had a request from an agent in Marion, Virginia, to cover some risk out there (the agency department had the request) and they could not issue the policy because it was the type of risk in which the policy could not be issued until the report was submitted to the Home Office, then they would confer with us and ask us when we were going to have a man out in that territory. I might say that the man has just come back from there and he would not be there again for a week or two weeks longer, and they would tell the agent. After conferring with us and after the information they have obtained from the agent is considered by the underwriters and by us, [fol. 1067] possibly it is found that it is one they could bind until the man did get there.

Q. I have reference to possible risks that come from out of the State, where there has been no inspection by the producer, and the producer is not in personal contact with the risk, and in those cases, I say, if there had been a local man who took the application for the risk, do you not think that that information would have been supplied which caused the delay in the issuance of the policy on account of the Engineering Department service not being available?

A. You mean, if the risk was one that had its headquarters in New York, say, and had a Branch Office here, and this local agent solicited and wrote the business?

Q. No. I meant the difference between locally produced business and non-resident business. In other words, if that broker had associated with him in the beginning a resident agent to help him get the policy or the application in shape, would that not have expedited the matter, instead of being subject to the delays of the Inspection Department in cases where no local agent was associated with the broker?

A. That would depend a whole lot on the ability of the agent, I would say.

Q. I am assuming, of course, that there is a competent agent.

A. Mr. Staples, I can't get into my mind that there is at any time any delay that affects the issuance of a policy in this territory, that is, the territory I am familiar with, because whenever we get a request, as we do now, for a risk that has originated outside of the State, we get that re-

quest from our Home Office. I do not recall any case where [fol. 1068] I have written them back and told them that we would be there in two weeks that there has been any complication about it. Now, the Home Office will do this: If I write them that and it is necessary that the policy be issued promptly, they will either wire me or call me up to send a man there right away, like we do right along. We had it about three weeks ago today, at a point about 150 miles from here. We have made special trips as far as Bristol. In other words, if the company feels the risk is worth while and they are interested in it, it is not going to stand back on a two day delay and probably the expenditure of fifty or seventy-five dollars, waiting for the report.

Q. But the Branch Manager said he had no authority to order you to make the inspection and he had to wait until you were ready.

A. No, I did not figure the Branch Manager in it at all. We get our orders from the Home Office on those risks written outside of the State.

Q. What service does this Branch Manager's office render to your office?

A. I suppose you are referring to locally written business now?

Q. Any kind of business.

A. The service that they might render to us would be on a risk written by them. We do not call our Branch Manager in on any risk written outside of the State unless we are told to do it by our Home Office, so, the only help he is to us at any time is that if one of his field men has written a risk somewhere in this territory here and we don't think much of it, we can't get anywhere with it, we will notify him, stating that the risk is poor, and then, unless certain things are done within a specified time, we are going to recommend cancellation.

Q. Does Mr. MacNeil's office render any service in your department?

[fol. 1069] A. I suppose you could say it would be a service. We work together on certain risks under certain conditions.

Q. In what way?

A. As I explained a while ago, they come into the picture with us, Mr. Staples, only when we find a risk that is what we classify as poor, and not necessarily one that is not al-

together good, but one that is poor and on which we are about to recommend to our Home Office cancellation. Then we do with them just like we do with Mr. Tabb's office; we give them a copy of the report that we submit, and we don't often have to tell them that we would like to have them step in, because they do that automatically. They will contact the assured, probably without even going to the agent in some cases; the field man will know the assured, but regardless of how they handle it, it doesn't make any difference to us. What we want to do is to get certain things remedied. That is about the only thing that I can say they are of any assistance to us, that is, things of any importance.

Q. That is not any assistance to you—you are really assisting them, aren't you, in keeping the business?

A. We are both working for the Travelers, and when our work has reached the point where we feel we can't go any further, you might say we "dump it in their lap"—not altogether, but we put it in their hands to see what they can do. We don't even follow them up sometimes. It is up to them then to let us know what they have done, if anything. We may go back to that risk again in thirty days and recommend cancellation without even discussing it with them again.

Q. I understood from the general testimony and custom of Branch Offices, that the Branch Manager does not contact [fol. 1070] the assured unless requested so to do or at the invitation, express or implied, of the local resident agent who produced the business. Is that your understanding, or not?

A. Well, it is my understanding, as I said, then, again, it has probably been referred to *in* the investigators known as field men who travel in certain territories assigned to them, and the contact could either be with the field man through the agent or with the field man and the assured.

Q. Do you have many contacts with the resident agent, as distinguished from the Branch Manager's office?

A. Yes, sir.

Q. Do you have much contact with Mr. Tabb and his office?

A. Yes, sir.

Q. What kind of cooperation and assistance to you get from that office in connection with matters that arise in the discharge of your duties?

A. Very good.

Q. Do you not give earnest and courteous consideration to any matters that they bring to your attention involving any risk that they have procured?

A. Yes, sir, we give them all we can.

Q. Do you consider that your office and the service that you render is always at their command, so to speak, at any time that they feel like calling on you?

A. It takes its usual routine. People call, at times, over the phone for an inspection that they would like to have made tomorrow, for some reason, and I will ask them to make up that form, just like you have seen it here, and send it up and I will get it in the morning, and just as soon as it is convenient to do it we will get to it just as soon as we can, and I might say incidentally that we do that for any agent that we have.

[fol. 1071] Q. You would give just as prompt response to a request from a local resident agent, or probably more prompt response, than you would to a request from a Branch Manager's office, would you not?

A. We get our requests from the Branch Manager. We do not recognize these requests in our Branch Office up there. If they come in and ask for an inspection this afternoon or tomorrow, we always tell them to let it be routed to them through the Branch Office.

Q. I did not mean through the agents working in the Branch Office, but that you would give as much or more attention to a request from Mr. Tabb's office as you would to a request from Mr. MacNeil's office?

A. Yes, we would.

Q. Now, you stated, I believe, that whenever one of these notification cards come to you from the Home Office that a risk has been negotiated by a New York broker, it is your custom to immediately contact the assured if he lives in Virginia, or his representative if he is a non-resident, and familiarize yourself with that risk; isn't that true?

A. Yes, sir.

Q. There has been testimony in this case that the companies recognize the ownership of these brokers and agents in the business that they produce and that the company would do nothing to interfere with their ownership. You do not see anything unethical or having a tendency to undermine the broker when you go and contact the local representative of the assured, or the local assured if he lives here,

in order to equip yourself and inform yourself so that you can render him service, do you?

A. If we have been notified that a risk has been written in New York or Chicago, with branches in Richmond, I cer- [fol. 1072] tainly do not see anything unethical in approaching that Branch Manager of that firm and making our contacts with him, no, sir.

Q. That could not be construed as an effort to try to take the business away from the broker, could it?

A. No, sir.

Q. Nor could it be construed as an effort to prevent the broker from placing that business with another company upon the expiration of the present contract, could it?

A. No, sir.

Q. Now, assuming that a local resident agent is supposed to render the service which is customary among these agents to render to their assured in a similar case negotiated by a non-resident broker, covering in Virginia, do you not believe that the local agent, in order to equip and inform himself to render the customary service which such agents do render to assureds, would have to contact the local assured or his local representatives?

A. I rather think that he would have to contact them.

Q. You testified, I believe, that from time to time you do get requests from agents, that is, local resident agents, to render inspection service in connection with contracts that they have procured for your company; is that true?

A. Yes, sir.

Q. I will ask you if it is not also true that the fact that you get these requests from time to time indicates that these agents are alert and watchful of occasions which might require inspection and that, although the number of times they find if necessary to call on you might not be so many, nevertheless, it would be indicative of the fact that they [fol. 1073] are on the job, expending a whole lot of time, probably, that does not result in the necessity for a call?

A. To begin with, those requests are by far the exception rather than the rule, and in the particular case I had in mind when that question was asked me this morning, the agent did that, I would say without any hesitation, as a matter of self interest. He did not want this assured to feel that we would neglect anything that could be done for his risk.

A. I did not have reference to that particular case. I am talking about the fact that these agents, from time to time, do call on you for service shows that they are on the job and watching out for the interests of the assured?

A. Mr. Staples, I would say this, that where we get a request from an agent to do some particular or some specific thing on a risk, we will have, in comparison to that, 25 to 50 agents who will try to keep us away from a risk and try to keep us from contacting assureds who are afraid of the inspection service. They have an idea that when an inspector comes around the assured is going to resent it and cause trouble for them whereby they may lose the risk, and in many cases we have almost had to insist on going to the risk in order to render service that we felt was necessary.

Q. The ones that do call on you are the ones I am speaking of.

A. In some cases that might be entirely true and in other cases it probably is one where the assureds themselves have made the complaint to the agent that we have not done this or have not done that, that probably some enthusiastic field man promised them we would do, so I cannot answer that question briefly by saying in some cases yes and in others no.

Q. Then, I understand you to take the position that about [fol. 1074] 25 out of 26 agents obstruct the operation of your servicing department?

A. That is inclination, yes, sir.

Q. Well, why do you think it is that the companies would adopt an agency system if they run into that sort of difficulties?

A. Well, the agency system, as I understand it, to begin with, is to get the business, and then if they get the business and it is good business, we won't have any trouble with it, but if it is bad business, we do have a right to expect them not to complain about our trying to give certain service that will improve it. To begin with, the majority of our risks, speaking of them in numbers, are good risks and that condition, of course, is not coming up every day where we have this interference with the agents, because I believe that we are capable of doing certain things on the risk, even without the agent's coming into the picture at all. I know of any number of them. I know some where the agent was afraid for us to go to the risk, that we have improved and made the risk very satisfactory.

Q. Then, you think, do you not, that an engineering service of equal ability for a mutual company which employs salaried agents and which is not particularly interested in keeping the contract in force, would be able to render much better service, in so far as servicing a risk and preventing losses is concerned, than a stock company would have?

A. Not necessarily so. There are some risks that are written by a stock company through large, influential brokers where there is no trouble at all in getting cooperation from the assured with the help of those brokers, but, at the same time, a capable engineer with a mutual company can render, as far as he is concerned, the same service as the equally competent engineer with the stock company renders. [fol. 1075] Q. So far as you are concerned, though, you think that you render all the service and that the agent, instead of rendering a service, is really an obstruction? I believe that is your conclusion, isn't it?

A. Any agent could write a good volume of business and for years not be any kind of an obstruction at all, and probably never be any obstruction, but I am citing cases of the average agent—and good agents, I mean by that—who do feel that our calling on the assureds from an inspection standpoint to try to get them to spend money, if you want to put it that way, to carry out certain recommendations, is likely to cause some ill feeling on the part of the assured and probably result in losing business, and, in addition to our selling the assured, it is up to us to convince the agent that he can handle the assured without any great amount of trouble.

Q. You differ from the other witnesses in this case who have all agreed that the agents render a very valuable service throughout the life of the contract, then, do you not?

A. The agent, Mr. Staples, can render a whole lot of service that would never come to my attention.

Q. What kind of service could he render?

A. I say he could. I don't know of any particular service. I merely mention that he can be of service probably, that I would never know anything about, because he deals with the agency department, the Manager of the agency branch, or he may deal with the counter or the underwriting division. Now, what help he is to them, I don't know, I could not say.

Q. It seems to be the general consensus of opinion among the chief men engaged in the stock casualty business that

these agents do render a lot of service and do call on their service departments. You think that the fact that they try [fol. 1076] to obstruct inspections by your department, when they encourage it in other companies' departments, is a reflection on the way your department handles those things in making their customers or clients mad, or whether it is a reflection on the agent?

A. Well, I don't think it is a reflection on us, the way it is handled. I think it is, rather, lack of information on the part of an agent when the time comes that a risk has gotten to the point where we have to do something say, drastic about it. In other words, I mentioned a while ago that the large majority of risks were good; if they were not, the companies could not stay in business, but when we do get one out in the territory where the agent has not had that experience in the past, he would not want us to remain on it and probably lose money, but he would rather have things take a natural course and probably improve themselves and avoid that chance of ill-feeling on the part of the assured.

Q. Some of these Branch Managers have stated that it is the general duty of a Branch Manager to go around and contact these agents and give them instructions and teach them how to perform their duties as an agent, and the value to their assureds of holding down their loss experience and saving them money by policy rates, and matters of that kind. Now, what do you think is the trouble with your Travelers agency—that the Branch Manager has failed to properly instruct them, or that your department creates a "rumpus" when they get around where the assureds are?

A. I don't think either condition exists. I think they properly instruct them, and I believe the agent sincerely wants to cooperate, and if he has, out of 20 risks, eight or ten which are bad, he would realize right quickly that something had to be done about it and he would come in on it, [fol. 1077] but if he has one out of, maybe, 25 or 30 that is getting a little "sour", why, he doesn't feel, maybe, that conditions are such as we represent, or thinks we are probably looking at it from the wrong viewpoint, or something like that. I don't think the agent deliberately wants to interfere, but the agent wants to be careful.

Q. You think the agent is really doing what he thinks is for the best interests of his client, don't you?

A. I think the average agent will look after himself, as well as he would his client, or about as quickly. The first

thing is, he doesn't want to lose the risk; that is the first thought in his mind. If he can do the assured a service by cooperating with us, he probably would do that, but it is a natural thing and I can understand it very well. I think, if I were an agent and was not familiar with the engineering service that can be rendered, and I had a risk of probably 500 to 800 or a thousand dollars premium, I think I, myself, would probably advise the man who is going in there to tell his assured, "You have got to spend $100 here or $200, or do something else on this risk"—I think I would be inclined, myself, to kind of get them to hold off a little bit.

Q. Do you say, or not, that this agent is trying to do what he thinks is to the best interest of the assured when he obstructs you, so to speak, as you have mentioned?

A. Well, the agent is at a disadvantage. He probably doesn't know much about the assured's business and he doesn't know much about our way of functioning; the defect might be a big hole in the floor, and he would be willing to leave that hole there, hoping nobody would fall through, if he did not disturb the assured by leaving it there, but we [fol. 1078] can't do that, we can't hope that it won't fall through; we have got to get it improved, but if we go there to get it improved and the agent feels we are going to disturb the assured, then the agent steps in and asks us to sort of "soft pedal" a little bit.

Q. May it not be, Mr. Murphy, that the reason these agents are not so cordial to your paying some of the visits is because they feel that you are making unreasonable requests of their clients and asking them to do things that they do not feel are proper to be done, or to spend a whole lot of unnecessary money?

A. I think that is true, and I think the assureds, in some cases think that.

Q. They probably do not think as highly of your inspection service as you do?

A. That is because they don't know anything about it. If we go to an elevator risk where they have certain kinds of doors that people are opening every day and falling down the shaft, and we try to get them to take the doors down and put up a door that is really safe, which means an expenditure of four or five hundred dollars, they may have had the doors there for twenty years and nobody has fallen down the shaft, and I can see where the assured and the

agent, too, might feel we were inclined to be a little too drastic and that we were looking too entirely after our company's interests, and would put some little objection forward to doing what we ask them to do; but from our standpoint, we have these accidents one after the other, where a man will open a swinging door, thinking he is going into another room, and step down an elevator shaft, so we have got to be firm in our requirements that certain improvements be made.

[fol. 1079] Q. And you are looking at the matter solely from the standpoint of the insurance company that you represent?

A. No, sir; we are looking at it from the standpoint of the insurance company and also from the humane standpoint.

Q. Does this money that you say controls and dominates the agent have any effect on you in so far as your loyalty is concerned? How about the money that you get from your company? Does that blind you to the interests of the assured, or magnify very much the interests of the company, or are you able to shed this influence of money much more readily than these agents are?

A. If I did not get paid by somebody to go around and make these inspections, I certainly would not go, that is true; I don't think there would be any question about that, but as long as somebody is paying me, I would not even hesitate to jeopardize my job if I thought a certain condition that came to my attention needed improvement.

Q. If you do your work in a conscientious way without regard to your salary, why do you impute these discreditable motives to the insurance agents?

A. Well, I know this: There has been more than one risk that I have recommended the company to get off of, and they have gotten off of it, and I was not the least bit afraid that if they did not write that business again my salary would be cut or I would be fired, so I have really never connected in any way the fact that I was getting paid with what I was going to do.

Q. I have no doubt that is true, but what I am trying to get at is, why do you impute to these agents the discreditable motive of having their whole vision blinded and their loyalty [fol. 1080] disrupted and their being disloyal to the company and the assured for a small commission?

A. Well, one very definite reason is, I have had agents tell me, "If I lose that risk, it will mean $200 to me." I

don't know what they have in mind, but they would rather keep that $200 commission, or whatever it is, than to run the chance of having the assured offended and run the chance of cancelling the policy.

Q. Suppose you were told that if you lost your job that you would lose your salary check, you don't mean you would go around and do something wrong?

A. I don't quite see the connection there.

Q. You said this agent would do something wrong if he thought he would lose the $200. You certainly would lose your salary check until you get another job, wouldn't you?

A. Yes, sir.

Q. Is that any reason why you should act improperly in the discharge of your duties?

A. No, sir. My salary check has never entered my mind.

Q. As a matter of fact, Mr. Murphy, what the agents are really doing is protecting the assureds from what they regard as unjust demands that you and your department are making or are about to make on their clients, isn't it?

A. That probably enters into it, yes, sir.

Q. And instead of being a discreditable and disloyal thing they are doing, however they may talk to you or whatever particular reason they may give to you that you credit them with, honestly what they are trying to do is to protect their assureds and their clients from a lot of unreasonable and [fol. 1081] unnecessary expense?

A. That is true, but at the same time they know we would not be coming around there and asking that these things be done if it was not for the protection of somebody, even though that improvement be to the protection of the company that carries the insurance.

Q. That is, if you thought it was necessary?

A. Yes.

Q. But they disagree with you, and the assured disagrees with you, that it is necessary. If you get a request for an inspection from the Home Office, does that always show whether the risk has been accepted or whether it is one that is pending?

[fol. 1082] A. Well, it usually indicates on the request "U. B.", that is, compensation, covered by a policy binding it, or the word "applicant".

Q. So, you know when you are inspecting, whether you are inspecting for the benefit of the underwriter or whether

you are inspecting as a matter of service for a policy already in force?

A. We usually do, yes, sir.

Q. Is your department under the same obligation to a non-resident producer and non-resident broker to render service, both before the risk is accepted and during the life of the risk if accepted, as your department is under to a Virginia resident commission agent, such as Tabb, Brockenbrough & Ragland?

A. I have never been advised of any distinction being made between them at all.

Q. And if you got a request from a non-resident broker with reference to a pending application, you would render the same service that you would to a resident commission agent, would you not?

A. Well, to begin with, we would not get them direct from any out-of-State broker. They all come to us through the Home Office.

Q. The broker would make the request to the Home Office, and the Home Office would send it to you; is that the way it is?

A. Yes, sir.

Q. Do you get requests from resident agents, or do they come from the Branch Office?

A. We get them direct from Mr. Tabb's office, yes, sir.

Q. Do you get any requests from non-resident brokers for service after a policy is in force, or does that come from the Home Office?

[fol. 1083] A. That comes through the Home Office, yes, sir.

Q. So, you don't have any contact at all with non-resident producers?

A. Have not had any, no, sir.

Q. Does a non-resident producer ever come down and talk to you about any of his clients and their risks?

A. They have done that, yes, sir.

Q. How many times has that occurred?

A. Well, I can recall at least half a dozen, I would say.

Q. During what period of time?

A. Well, for instance, when this Williamsburg Restoration was in full swing, they had men here from New York, I think, several times, and there was one other that I was trying to think of when you asked me the question, but that

about sums it all up—it would probably be about half a dozen times.

Q. It would not be over half a dozen, would it?

A. No, sir.

Q. How long have you been connected with this office?

A. Well, I have been connected with the company twenty years next May and I have had this position I hold now sixteen years.

Q. Has any New York broker ever sent his engineering service down here in connection with any risk that you were servicing?

A. Yes, sir.

Q. And when was that?

A. In one particular case, we would get contact with this [fol. 1084] man about once a year for several years, I recall.

Q. Who was it that came down? Was it an engineer?

A. Yes, he was an engineer from the broker's office.

Q. And what type of risk was it?

A. A store risk, chain stores.

Q. And what was the type of service that he was render- [fol. 1085] ing when he got here?

A. Well, he was making the inspection, just like we would, and he then conferred with us about conditions as we found them, and would make his recommendations also to his broker's office in New York.

Q. And how many buildings did that chain store have in Virginia, if you know?

A. I would say probably 30, maybe more.

Q. Is there any other broker's engineer whom you have ever known to come to Virginia?

A. I don't recall any coming to Virginia. I know there is one who does travel down to this territory, though.

Q. Is there any other time that they are called to service any risk of the Travelers, or any other company, except the one you have mentioned, and if so, please state the details in connection with the service rendered?

A. Yes, there is one other national risk that has a branch plant in Richmond, in fact, several in Virginia, and they have this broker that writes that, and he has his man down through here, too.

Q. What kind of risk is that?

A. That is a dairy risk.

Q. Is there any other broker's engineering service, except those two, that you can specify?

A. Well, I do recall one who was here on a specific job and whom we worked with for about three weeks. That has been, I guess, as much as eight years ago—in Philadelphia.

Q. What kind of risk was that?

A. That was a utility.

[fol. 1086] Q. Was that after the risk had been procured?

A. The details of that I do not recall exactly. As well as I remember, they were assembling a lot of data to present to the assured, or to the applicant, I think it was at that time, and we were instructed to help them.

Q. In other words, they were trying to get information, rather than servicing the business?

A. I think that was it. As far as I know, they may have had the business and were going to offer it to various companies after they had assembled enough information to know what it was going to cost and to know what the premium was going to be. I don't know that particular end of it at all; all I know is that we were instructed to assist them in gathering this information.

Q. Then, you would not say that this was a service being rendered to a policyholder, would you?

A. I could not say that it was, but that was the impression I got.

Q. That it was not being rendered to a policyholder?

A. It was a service being rendered, because they had the authority from this assured to make these inspections. They were surely going to give them some information after they made the inspections. Whether they were going to submit a rate or not, I don't know.

Q. The assured would probably get three or four brokers there to make an inspection, if they were trying to work out a rate for them, wouldn't they?

A. Yes. I say, from that end of it, I am not familiar at all with it. I do not have the information as to what prompted them to be making the inspection.

[fol. 1087] Q. Was it a risk then being carried by your company?

A. No, sir.

Q. Then, they certainly were not servicing a contract of the Travelers which they proposed taking up with the question of accepting the risk if they were authorized to offer it?

A. I know that the Travelers were not writing it at the time we made the inspection.

Q. Is there any other?

A. No, I don't recall any other.

Q. You spoke of the fact that in risks which have been produced outside of the State, you had no contact with the local resident agent in the servicing of those risks. Isn't it true that, certainly up to the time of the passage of this Act, it was not customary to have a local resident agent associated in such contracts, except in unusual cases?

A. Yes.

Q. Has your entire experience in the insurance business been in the engineering department of insurance companies?

A. Yes, sir.

Q. And what States have you worked in in that capacity as the head of a department?

A. Virginia.

Q. Any other State?

A. No, sir.

Q. Now, you say these brokers in New York send their business or communicate with you through the Home Office?

A. Yes, sir.

[fol. 1088] Q. Has that always been the practice ever since you have been in the engineering department, or has there ever been a different practice?

A. I don't recall, as far back as I can remember, that any broker ever dealt direct with the engineering department.

Q. Have you ever had any direct contact with brokers, yourself?

A. No, sir.

Q. Mr. Murphy, if you never have had any direct contact with brokers and all the business the brokers have to do with the company is done through the Home Office or some Branch Office outside of the State, how is it that you are so well qualified to know about how these brokers are "on the jump" and are so well informed about everything that is going on?

A. We are furnished with copies of correspondence that passes between brokers and our Home Office and also between the Home Office and brokers, keeping us posted as to what they suggest on what we do at this end.

Q. Correspondence about what?

A. Well, the condition of the risk, for instance, or it might be a public liability risk where they are putting up a new building, or contemplating doing it, and they want to cover

it for public liability; they notify the Home Office, we get a copy of that letter furnished us by the Home Office, asking us to check up on the frontage and area, and if the building has progressed far enough to give them that information, and how it might be affected by other surrounding property. In other words, the Home Office does not just tell us that this risk is to be inspected; they make us fully acquainted with everything in connection with it that our department would be interested in.

[fol. 1089] Q. If they get any information from the broker, they send it to you?

A. Yes, sir, anything that we would be interested in, I mean. It is not a question of payment of premiums, and things like that, but if it is something that affects the risk, either from the standpoint of safety of the risk or classification, we get that.

Q. That necessarily would result from cases in which the owner had communicated his request to the broker and the broker had forwarded it on to the company?

A. Yes, sir.

Q. Is there any other source of information that you know of that the broker has, other than the insurance company or his assured as to risks in other States than the one in which the broker maintains his office?

A. I can't say how they gather information.

Q. You don't know of any other source, do you?

A. No, sir.

Q. They do not have the same opportunities for acquiring information with reference to a Virginia risk that an agent living right in that community would have, do they?

A. Well, I cannot answer that, because it might be an operation that they are interested in and that they constantly keep in touch with because it is worth their while to do it. It probably means the losing or the saving and keeping of the risk, and what channels they work through, I don't know, but I do know this: In certain national risks that we have, they have their safety department (the assured has) and they are kept informed by us as to what we know is going on around here about that plant. We do not know whether any competitor is coming in, or things [fol. 1090] like that, but we keep them posted on conditions in the plant and the like of that, as well as the information going to the broker. I mean by that, we do not deal with the assured's office direct. The information that we get

goes to them, just like it goes to the broker, through our Home Office.

Q. You mean that you send information to the Home Office and you suppose the Home Office sends it to them?

A. I know they do, because I know a man from our Home Office that goes there and confers once a month with them on getting up certain literature that is being sent out to their various plants.

Q. Do you mean your Home Office man goes to the broker, or to the assured?

A. In this case he goes to the assured, together with a representative of the broker.

Q. How long has it been since you have had to call on the Home Office of one of your assureds which has a branch in Virginia in order to get cooperation from the local State Manager of the business?

A. About a week.

Q. How long prior to that time did you have occasion to do so?

A. It has been done in this particular case for the last year and a half at various intervals.

Q. Do those cases come up often?

A. Well, it depends on what changes might be made in the property that I have in mind, and the operating conditions.

Q. Do you state that you have been communicating about this same case for about a year and a half?

A. Not the same condition, but, I mean, since we were [fol. 1091] there the last time, say, when we go back again, something else has come up that we have to bring to the attention of the Home Office, because we do not deal direct with the broker or the assured.

Q. Do you get in touch with the local manager of the concern?

A. It just so happens that we will from now on, but up until now the set-up has been that all of these matters had to be taken up with our Home Office and then with the assured.

Q. You say the first thing you do is to contact this local manager?

A. Yes, we do. We make ourselves acquainted and get permission to go through his building and make the necessary inspection, but the assureds, themselves, reserve the right to say what recommendations and what conditions

will be complied with, but as to the expenditure of money up to a certain figure, we can contact him direct.

Q. Do you try to work through the local manager before you send it to the Home Office, in these cases that you have spoken of?

A. No, sir. We have instructions not to do so.

Q. Is that contrary to your general experience, or in accordance with it?

A. For risks of that kind, it is really in accordance with it.

Q. What type of risk was it?

A. That was a very well known, nationally known cigar store.

Q. Have you ever had a non-resident broker to attend one of your safety meetings of fleet risk drivers?

A. No, sir.

Q. I believe you said that it is customary for the resident agent to attend these meetings with your department when they are held, did you not?

[fol. 1092] A. We usually make a practice of inviting him down.

Q. Well, do they attend?

A. I have had them attend, but as a general rule they do not. Lots of times we would prefer that they would not.

Q. You don't want any more obstructions, do you?

A. Not in that particular sense, but these meetings have to be handled in a right sort of way. In other words, you can't do too much talking in them. These people get restless and you don't get across what you are trying to do, so, after the assured takes most of the time, we feel that is about all the talking that ought to be done.

Q. Did you not state on direct testimony that these agents do usually attend these meetings?

A. I don't think I said they usually do; I think I said we usually request them to do it.

Q. How many supervising engineers, or men who hold the same positions with reference to insurance engineering organizations in Virginia, do you know and can name?

A. Well, all companies do not have the same titles applying to the men. I know Mr. Colston.

Q. With what company?

A. He is with the Liberty Mutual. I know Mr. Freer, with the Globe; I know Mr. Hancock, with the F. & C. I don't know this new man with the Hartford, but I knew

the other man who was here; I can't call his name now, but I don't know the new man.

Q. Are there any more that you know? Do you know [fol. 1093] who is with the Employers Mutual?

A. I think it is a man named Lewis, but I don't know him.

By Mr. Christian:

Q. How about the Aetna?

A. I don't know the present one. I knew the man who was here before him.

By Mr. Staples:

Q. How about the Liberty Mutual man?

A. I know him.

Q. Who is that?

A. Mr. Colston.

Q. How many men are there in the engineering department of the Globe?

A. In Virginia the only one I know is Mr. Freer.

Q. How many do you know in the Liberty Mutual?

A. Mr. Colston.

Q. That is not much of an organization of salaried personnel that Mr. Christian asked you about, is it, if there is only one man in it?

A. Of course, while we have more men, there is a difference in the volume of business written and the kinds of business that are written.

Q. How many are in the Fidelity & Casualty Company?

A. They have a man here in Richmond, and I understand there is a man who is located in Roanoke; I do not know him, though.

Q. In some agent's office there?

A. I don't know whether he has his own office or is with an agent, but he probably doesn't have either; he probably works from his home.

Q. Works from his home?

[fol. 1094] A. Yes, sir. In other words, they don't have an office set-up. He has a territory to travel, and lots of times the company will pay for his telephone and equip him with a desk and the like of that, instead of paying for an office.

Q. How about the Aetna?

A. I know they have a man here in Richmond, but whether they have any more, I don't know.

Q. How about the Employers Liability Company?

A. They have a man here and they did have a man who handled part of this territory out of Baltimore.

Q. Is there any casualty company or casualty and surety company at all that has any organization at all comparable to the Travelers?

A. Do you mean in size and number of men?

Q. Yes.

A. None in Virginia, no, sir.

Q. These seven companies that you enumerated, I believe you stated, are the only ones that have any sort of engineering organization at all in Virginia, aren't they?

A. As far as I know, yes, sir.

Q. Most of them have only one man and some of them may or may not have one other man, according to your best knowledge and belief?

A. Well, I was told that the Ocean has a man here, but I don't know him and I can't say that they do.

Q. If these other service organizations, if you can call them organizations when they consist of one man, or one man and a helper, are, as you have described, it would be [fol. 1095] "stretching the blanket" considerably to say that their practices and procedure are the same as in your office, would it not?

A. As I understood that, it meant the way they receive their information about risks that they are to inspect and the way they handle them. I would say that it is, as I stated before, practically the same as ours. The form may be made up just a little bit differently, but I know, as I explained in talking about the man who was with the Hartford and men that used to be with us and have gone with other companies, in discussing these things, that it is practically the same. In other words, they submit the reports just as we do and the information about them like we do.

Q. You mean, they use the same general type of forms that you use?

A. Yes, sir.

Q. But as to the method of doing the work, or the efficiency of doing the work, or the variance of doing the work, you did not mean to say that it was the same as yours, did you?

A. I would say the men who had been with us would be just as efficient with some other company as they had been with us.

Q. Do you mean that would apply to all these seven companies?

A. All of them have not been with the Travelers.

Q. Whom did you have reference to when you said you thought they would be just as efficient?

A. Well, the F. & C. have a man that used to be with us.

Q. Is that the only man about whom you can make that statement?

A. The man with the Globe, Mr. Freer, used to be with the Travelers.

Q. Are there any others?

A. No, but I know the man who is with us, that used to [fol. 1096] be with the Hartford. He said his work with the Hartford was practically identical with ours, except it was more along one line of work than diversified like ours.

Q. Who is with the Hartford now?

A. A man named Gow.

Q. Where did he come from?

A. They transferred him here from somewhere else. I think he was located in Baltimore.

Q. Who is the Liberty Mutual man?

A. Mr. Colston.

Q. From what college did he graduate?

A. I don't know the college, but he is a college graduate.

Q. Now, you spoke of a certain type of inspection that your company customarily renders on certain motor vehicles, consisting of inspecting the mirror, brakes, stop light, and tires. I ask you if it requires any particular type of skill to conduct an inspection of that kind?

A. I would say not of the mirrors and the stop lights, and even the tires, but I do think that if a man is going to test the brakes he ought to have some knowledge of mechanics.

Q. How does he test the brakes?

A. He can test them by operating the car.

Q. Putting his foot on the brake and seeing how long it takes to stop the car going at a certain speed?

A. That is right, but that does not necessarily tell the story, either. I believe that a man who knows how that [fol. 1097] brake is made up can tell better how it responds than a person who simply knows there is a brake there and puts his foot on the pedal and it catches something.

Q. Do you mean that a man who knew the mechanical construction of the brake could better tell whether it was in

order, even though it stopped exactly the same as another car with a different type of brake, without examining the mechanism as a mechanic?

A. I think that man, knowing how important it was not to have too much lost motion between his brake pedal and his brake band, would recognize, if that lost motion was there, more quickly than a man who knew the car and operated it himself. And I also think that a man, in trying out the steering gear, knowing that if the radius rod came loose that his steering gear would not be any good to him, would be more likely to detect that defect than a person who simply got up there and turned the wheel a little bit.

Q. I did not ask you about the steering gear. That doesn't come in the 12-minute inspection.

A. Yes, I refer to the 12-minute inspection.

Q. Nothing can be done in twelve minutes?

A. I say that is very little time. I do not say that a complete inspection and a satisfactory inspection could be made in twelve minutes.

Q. What kind of inspection would he give of the steering gear? If he was going to run the car out and see how the brakes were operating and inspect all these other things, how much time would he have left to inspect the steering gear?

A. It would not take him three minutes to do that.

Q. What would he do to inspect the steering gear?

[fol. 1098] A. Lift up the hood to see how his connections were down there. It might have a cotter pin loose down there; all you have to do is to lift up the hood and know where to look for that radius rod connection.

Q. That is a right simple thing for a man to learn who wants to do a casual inspection of an automobile, isn't it?

A. Yes, it would not take a genius to learn that.

Q. So, if an insurance agent wants to learn a little something about it, he, naturally, would pay some attention to what he would have to do, wouldn't he?

A. Yes, he could learn it.

Q. Is there any reason why an insurance agent could not make that same inspection, if he wanted to, just as efficiently?

A. I don't believe the average man whose mind is going along a different line of thought would or could be expected to make the same inspection as a man who was concentrating his whole thought and effort on that particular thing.

Q. Is that all that these inspectors who inspect these automobiles do? Do they just make those 12-minute inspections?

A. No, I don't mean that, but their whole training is along the line of looking for those defects, and I don't think anybody would claim that a man from a drygoods store, any more than a man from an insurance office, would go out and inspect 15 or 20 trucks or buses, with the same results as a man who has nothing to do and think about but that.

Q. Well, if the man in the insurance office makes it a part of his business to do this inspection——

A. Yes, if he did that right along and kept up with the [fol. 1099] changes that are being made in the equipment, and matters like that, I think he could finally do it very efficiently.

Q. There is nothing in the type of inspection that we have just mentioned that requires any mechanical knowledge at all, is there?

A. Practically none, but what I am referring to and what I have in mind is that that is not what we consider inspection of a truck or a bus—looking at the rear mirror or the windshield, or something like that.

Q. How often do you make inspections?

A. Do you mean, in a particular risk, how often would we inspect that same risk?

Q. Yes; how often would your periodic inspections be?

A. That depends on the kind of risk it is. If it was one where a number of trucks were being used constantly during the day and every day in the week, we would look at them from three to four times a year at a minimum.

Q. I believe you stated that they might also require some information about the history of accidents that had happened to a fleet of cars, or something of that kind?

A. Yes; we would think that was very important.

Q. Is there any reason why a resident agent who was rendering that type of service to an assured could not get that information from the assured as well as you could?

A. I don't know of any reason why he could not—if the assured wanted to give it to him.

Q. That is where you get it from, isn't it?

A. In the beginning, yes, but after that we would get our [fol. 1100] experience through claims that had been reported and we would get copies of the accident reports.

Q. Suppose he had an accident in which no claim was asserted against him—it might have been the other fellow's

fault, and, still, it might have broken the equipment all to pieces?

A. We get that, too.

Q. Where do you get that?

A. From our Claim Department.

Q. Where does the Claim Department get it from?

A. From the assured.

Q. I said, no claim is made against the assured.

A. I know, but he is expected to report any accident, even if he doesn't think there is liability on him. I am not endeavoring to answer that in this way, but I think you would find that there is an understanding between the assured and the Claim Department that he will report any accident that has occurred, because the man that admitted liability might change his mind the next day or the next week or even as late as next month.

Q. That still does not alter the question I asked you, that is, if you did not get your information from the assured?

A. In some cases we do, but after our first contact, we get our information from the Claim Department.

Q. I thought you meant the company itself. The Claim Department is just as much a part of the company as you are.

A. That is what I mean. The company itself gets the information from the assured's report and we get it from the Claim Department.

Q. But your company or you, or however you get it, it [fol. 1101] comes from the assured, doesn't it?

A. From the assured, yes.

Q. There is no reason why the resident agent could not get that from the assured just as well as the company?

A. I don't see any reason why he could not.

Q. What type of service is it that you render in a fleet risk that a resident agent cannot render if he has the time and goes to the trouble to do it?

A. He can do, I guess, everything that we could do. It is a question of whether he could do it as efficiently as, not only the Travelers' Engineering Department, necessarily, but any engineering department that, as I said awhile ago, concentrates on that line of work. In other words, I do not believe that an agent will be inclined, for instance, on a school bus risk, to take his time to measure all these school buses for the seating capacity, which affects the rate; that he is going to travel over the roads these buses travel over

to determine whether there are any road crossings or sharp curves or stops, or things like that, that we do, or that he is going to take the time to talk to these drivers to bring out the conditions that we do bring out in our report about their ability, age, and the like of that; that he is going to hold meetings of the drivers of these trucks or buses; that he is going to lift up the hood and wipe the oil off the motor number to check that with the information that has been given him by somebody to see if that is really the truck that they are insuring; I don't think he is going to do that as efficiently as a man who hasn't got anything else on his mind but to go out there and do that without worrying whether he is losing some commission from his office while he is doing it.

[fol. 1102] Q. My question was not as to what you think the agent would do, but as to what he could do if he wanted to and tried to do it. I put in my question the assumption that the agent is undertaking to do it. What is there that you and your department do that he is unable to do?

A. Well, I think any man could be trained to do that same thing in the course of time. If he has certain instructions to follow——

Q. He doesn't have to tell the driver about the crooks in the road that the driver runs over every day, does he?

A. He doesn't tell him about it, no, but he tells the Home Office about it. The agent would have to tell somebody about it if he found it out. If the agent went there and found out there were some dangerous railroad crossings and some very sharp curves, I don't think the agent could give the assured or the company he represented as unbiased information about the risk as we could.

Q. Are you talking about the time before the risk is written, or afterwards?

A. Well, that frequently is before it is written, or even after it is written. It might be written and we would not get to it for two or three months after the policy was issued.

Q. What I was getting at was the service rendered to the assured, and not the service to the company.

A. Well, I stated just a moment ago that, in my opinion, an agent, or any other individual, could be, in the course of time, instructed so that he could make an inspection of a fleet risk that would be of service to the assured. But I still can't picture in my mind an agent, as I know them, going out and inspecting a lot of trucks and giving the as-

[fol. 1103] sured the same service that somebody else could give who was not concerned about anything else except the inspection of those trucks. Now, if he is going to close up his office and go into the inspection of trucks and buses, then, I say he can do it just as well as anybody else, but I will say this, if I had a fleet of trucks and I wanted them inspected for the purpose of getting some information I did not have I would not call on the insurance agent; I would call on somebody whose business it was to deal with trucks and buses day after day.

Q. I don't believe you think very highly of these insurance agents, do you?

A. Oh, yes, I do; I think they are all right in their line, but I don't think that the insurance agent is interested in being an inspector.

Q. These insurance agents have been obstructing too much the recommendations you make for their clients' spending money, haven't they, to have earned from you a very good opinion?

A. No, I haven't any feeling about that.

Q. It doesn't make you feel particularly kindly to them when they say they don't think it is necessary for their clients to spend the money to do the things you think ought to be done, does it?

A. I give them credit for having their reasons for it and their opinion about it, and I certainly don't have feeling because they do feel that way about it.

Q. Now, what type of service is there that you render in connection with a compensation risk that a resident agent is unable to render if he is willing to devote the necessary time [fol. 1104] and attention to it?

A. Well, if the agent is going to familiarize himself with the necessary guards for saws and planers and rip saws and joiners and molding machines and emery wheels, and things like that, I say again he can eventually become a good inspector. On the other hand,—and I have had agents go in plants with me, although in that case they were depending on me to gather that information—I certainly can't express the opinion that a man who is not primarily in that line can do the same service to the assured or to anyone else as a man who is doing that exclusively. He doesn't have the time to do that.

Q. What particular mechanical things should a man be trained in that would require engineering service and, gen-

erally speaking, that an insurance agent would not be able to perform efficiently?

A. I think that could be illustrated by asking any agent you might select, what is the difference between a round-head and a square-head joiner in a planing mill, whether he would know one if he saw it and, if he did see it, what he [fol. 1105] would decide to do about it.

Q. Then, you think the mechanical inspection of machinery is something that your department should be called on for, do you?

A. Yes, sir.

Q. Now, is there anything else?

A. I think the agent should know, if it happens to be a quarry risk, what kind of dynamite they are using, how they are inserting the fuses in the stick of dynamite, how they fire it, whether electrically or by the old fuse, what kind of tools they use in loading the hole, and how far the explosive should be stored from where the operations are. Now, if he is going to have all that information——

Q. Generally speaking, then, you think that an agent would not be able to make the proper inspection of a quarry risk?

A. I don't think he could do those things and be successful in his insurance agency.

Q. Are there any other types of risk of work generally pertaining to a compensation risk, except mechanical matters and blasting methods, and things of that kind, that you think an agent would not be able to do?

A. Well, it might be a compensation risk that has on its premises elevators that are unguarded from the standpoint of shaftway protection, and it might be a compensation risk on some floor where they have elevators that the public uses and where they are not equipped with interlocks.

Q. An elevator risk is different from a compensation risk, isn't it?

A. I know, but this man that he is insuring has that hazard there and the agent doesn't recognize it, I don't think he is giving that man proper service in the way of calling it to his attention. That is why I do not think the agent should be expected to be as efficient in that as some- [fol. 1106] body who is in that line of work.

Q. You think then, that in elevators he would not be as efficient as a mechanic?

A. Yes, sir.

Q: And I suppose boiler inspection is also another type in which an agent should call on your office?

A. I think so, yes, sir.

Q. But generally speaking, out of all this great mass of information which you gave in answer to Mr. Christian's questions, there is a whole lot of it that an agent can, if he is willing to take the time and the trouble, properly perform, is there not?

A. I don't question that there is some service that he coud do for the assured, no.

Q. He can do nothing like what you do?

A. I think there is a lot that he can do.

Q. Mr. Christian just asked you as to the difference in the point of view, if any, of the assured and the insurance carrier as to reduction of loss experience. Of course, it is to the interests of both that losses should be reduced, is it not?

A. That is right, yes, sir.

Q. However, there is a point where it is not profitable to the assured to spend too much money in order to prevent possible losses; is that true?

A. He may be furnished with recommendations which, if all were complied with, would cause an expenditure of [fol. 1107] money which would be greater than the immediate result in the way of savings.

Q. After all, there must be a sort of point of happy medium, so to speak?

A. Yes.

Q. And you frequently have a difference of opinion with the agent as to what that happy medium is, or between what you think it is and what he thinks it is; isn't that true?

A. That is true.

Q. A simple illustration of that might be, I believe, that if you had a fire insurance risk, of course, if the man tore the building down on which you had the risk or constructed a fireproof building, he would not have any risk of loss from fire, would he?

A. That is right.

Q. However, the cost would be so great that he could not afford to do it, generally speaking, isn't that true?

A. Yes, that is true.

LEWIS C. ADAIR, a witness previously called by the plaintiffs, recalled in rebuttal, further testified as follows:

Examined by Mr. Christian:

Q. Mr. Adair, please tell me whether you are familiar with the organization, personnel, aims and method of carrying out the same of the Engineering and Claim Departments of the Fidelity & Casualty Company as maintained in Virginia?

A. Yes, sir.

Q. I believe you testified before that you were in authority over those people in your particular company, did you not? [fol. 1108] A. General supervision but both the Engineering and Claim Departments, however, are directly responsible to those divisions in the Home Office.

Q. Are you sufficiently familiar with the organization, personnel, aims, and methods of carrying out the same, of the Engineering and Claim Departments of the other leading companies as maintained in Virginia to make a comparison between yours and theirs?

A. In a general sort of way.

Q. Will you say whether they are generally similar or generally different?

A. The same thing is true of companies generally that have a man in charge of the claims division who has under him investigators who investigate and dispose of claims under his supervision. The same thing is true engineering-wise. There is a ranking man with assistants who work under his general direction, he working under the direction of the Home Office.

Q. Do you know whether or not they try to perform the same things pretty generally?

A. As they are dealing with the same classes of business, their objects are naturally the same and the conditions would have to be generally the same.

Q. Are you sufficiently familiar with the Travelers Claim and Engineering Departments to know whether theirs are generally similar except for being larger than those of the other companies?

A. Yes.

Q. For one thing, you have heard all of the testimony today of Mr. Murphy and the testimony last night of Mr. Davison, have you not?

A. Yes, sir.

[fol. 1109] Q. And having heard that, can you point or do you believe anybody else can point to any difference between their Claim and Engineering Department as maintained in Virginia and yours?

A. None except for possibly minor variations in details of operating methods and forms.

Q. How many people with headquarters in Virginia are in your Claim Department?

A. Six.

Q. Is Mr. J. C. Kidd the head of it?

A. Yes.

Q. And he was trained in the Travelers Claim Department by Mr. Davison?

A. Yes, sir.

Q. How many people in the Engineering Department of your company with headquarters in Virginia?

A. Three.

Q. Where are they located?

A. Two in Richmond and one in Roanoke. There is a fourth man who does specialized work in Virginia who has his headquarters in North Carolina. He handles large turbines and internal combustion generating sets. He is a specialist in those lines, in addition to a graduate engineer, having served a four or five year apprenticeship with the General Electric Company.

Q. Are all of these people salaried people?

A. All salaried people.

Q. I believe it has been indicated here that the Travelers business casualty-wise in Virginia amounts to about seven [fol. 1110] hundred to eight hundred thousand dollars per year. What does yours average casualty-wise and leaving out the fidelity, forgery and surety?

A. Leaving out the bonding lines, about $375,000.

Q. You have three and one-half engineers and the Travelers has seven besides Mr. Murphy; is that right?

A. That is about right.

Q. Do your engineers have the advantage of clerical service in your office?

A. Yes.

Q. Is the engineering division used to any extent in connection with the bonding business?

A. No.

Q. Are any of your claim people located anywhere except in Richmond?

A. Roanoke and Norfolk.

Q. How many of your Virginia representatives who are licensed as resident agents write casualty insurance contracts in their own offices?

A. I would estimate about 75 percent.

Q. Please state whether it is ordinarily a part of the representations or the sales talk of producers in Virginia to prospective automobile liability assureds with fleet risks that the agent, as distinguished from the Engineering Department of the company, is going to inspect the automobile equipment throughout the length of the contracts and inspect the drivers to determine whether they are handling the equipment with proper caution and care with the idea in mind of preventing accidents?

A. No, sir.

Q. How often would you say you are in contact with resi-
[fol. 1111] dent commission agents?

A. Not less than once a day and frequently more often than that in the several States in which I operate.

Q. Am I incorrect in my impression that your prime duty is to assist those men in their work actually in the field and in contact with the assureds?

A. Yes, sir.

Q. Do you ever hear any of them claiming to an assured that he is going to conduct those inspections?

A. I have heard them say that they would assist in inspection work, yes, sir.

Q. And to what extent is that an ordinary representation or usual one?

A. It is not usual, no, sir.

Q. Is it a usual thing for the agent to represent that he is going to investigate accidents and adjust them efficiently and economically or what is usual for him to say on this subject?

A. Under present-day conditions, the tendency of agencies generally is to undertake to sell the National claim service of their companies which, in this day of automobile travel, means a great deal more than it did ten years ago. Today a man is apt to need claim service in an adjoining state or one hundred or two hundred or three hundred miles from

home as he is to need it at home. As a matter of fact, if he gets into a bad accident there he is more badly in need of service than when he is at home among friends and would know reasonably well what to do himself.

Q. Would you have an opinion as to whether it would be more advantageous for an agent to tell the assured he is going to investigate the accidents and see that the liabilities resulting therefrom are economically adjusted or [fol. 1112] that the claim organization of the company to which you refer is going to do this?

A. Not with the more substantial assureds certainly, as they would readily realize that on their claims they needed experienced and competent claim service.

Q. Do you know of your own knowledge whether or not the working time of a successful agent in the general insurance business in Virginia is sufficiently free from the pressure of other duties to enable him to have time to make efficient inspections of cars and their drivers and factories and their workers?

A. My opinion is that it is not, based upon the fact that I know of no successful agent who undertakes to do it.

Q. The Witness Boswell said the other day that there is no reason to believe that an agent representing good companies is going to have any difficulty at all about claims, either with the assureds or companies, and that no legitimate claims are denied by good companies. What do you say as to that? Do you deny its accuracy or confirm its accuracy?

A. I think that is entirely true. I don't think there are any of the better companies that have any wish or desire to do anything except to pay all claims which they properly owe.

Q. Please say, in your six states, do you come in contact with casualty agents having workmen's compensation, automobile and other business which covers at points in those states remote from their offices?

A. Yes, sir.

Q. How about business covering at points in other states than the states of their offices and residences and by which they are licensed?

[fol. 1113] A. Quite generally.

Q. Please say do they ordinarily, when they produce business with this remote coverage, divide their commissions

with agents in the localities of the coverage where a state law does not require that of them?

A. Very seldom unless there is some statutory requirement.

By Mr. Staples:

Q. I would like to ask, as a basis of objection, whether the witness is talking about fire insurance or casualty insurance or both?

A. I am speaking of casualty insurance. That is the business in which I am experienced.

By Mr. Christian:

Q. Did you ever see any evidence, except in the exceptional cases that you referred to on your examination in chief, of the assured wanting to build up local good will or in this single-shot automobile and other personal casualty business wanting to have his interests advanced by his producer giving a part of the commissions to agents in remote localities where the coverage exists in order to enable the assured to get service from those agents, of such a division being thought advisable?

A. No.

Q. Mr. Tabb indicated that he had never seen any evidence, in the conduct of a public liability business that is pretty wide-spread or workmen's compensation business covering both in Virginia and other states, that a Travelers agent needed such an association as my friend, Mr. Staples, calls it, in order to enable his assureds to receive adequate service. Having reference to your contact with similar business on behalf of Fidelity & Casualty Company of New York and its agents, do you join Mr. Tabb in that statement or [fol. 1114] do you dispute it with Mr. Tabb?

A. Our agents do not find it necessary on interstate business to associate agents in other states with them in order that their assured's business may be properly serviced.

Q. Are casualty agents, licensed by Virginia as resident agents, usually guarantors to their companies that the premiums on contracts produced by them will be paid?

A. Agents are not held for earned premiums on items which are cancelled within the normal credit period which is sixty days.

Q. Under the Insurance Department regulations agents are not permitted, under the discrimination statutes, to extend a longer credit than that, are they?

A. It is my understanding they may not do so without charging interest for any additional extension.

Q. Is it correct that in many cases when bonds are written, especially of large size, the agent has to get authority from the Home Office to write the bond and that if the Home Office specifically authorizes the particular bond to be written, the agent has no responsibility for the premium in many cases?

A. No responsibility unless or until he collects it.

Q. Having reference to compensation insurance upon a force of men employed by a contractor doing a road job, please say is it of any advantage to the assured or to the company, in your opinion, to have the producing agent go out and inspect the work during its progress from time to time?

A. I would say not.

[fol. 1115] Q. Supposing a North Carolina contractor comes to Virginia and a Virginia agent is trying to sell him his workmen's compensation contract, what is there that you know of that the agent can tell him that the agent himself is going to do after the contract is made, and during its life, as distinguished from what the engineering and claim department of the company is going to do, that constitutes service?

A. Really nothing.

Q. Would you consider that the agent going down to the Highway Department and getting the contractor's estimate checks released a few days sooner than they otherwise would be released would be service under that compensation contract?

A. Not necessarily. Cement or material salesmen who had equal entree at the Highway Department would be delighted to do the same thing.

Q. What services are there of value to an automobile fleet assured or workmen's compensation assured with coverage in Virginia, of which a Virginia resident agent is the producer, which the agent is enabled to render him only by virtue of his presence within the state of Virginia, which would not be available to that assured if he had placed that business with a Washington or Baltimore producer?

A. I would say he would get equal service under either set of circumstances.

Q. Going back to that issue I presented to you just now about the advantage of a Richmond producer over a Washington one where there is Virginia coverage, it has been testified that in order properly to service an automobile fleet or compensation risk in Virginia a non-resident producer will have to make personal visits to the state and [fol. 1116] familiarize himself with the conditions pertaining to the risk. Do you believe that is true?

A. No.

Q. Why not?

A. It isn't generally done and it not only isn't generally done by non-resident producers but on the more substantial fleets it isn't done by the local producer because the more substantial fleets nearly always operate over a considerable area and it just isn't in the cards for the producer, whether he be a non-resident or a resident, to get around to all of the several locations from which parts of that fleet operate and personally check it up when there is really nothing that he, the assured or the company gain from having that done, when it is known by all three of them that the companies' engineering organizations, whose business it is to do that, are going to do it. So that it would simply be a duplication and waste of effort for the agent to put his time into that sort of work instead of into his normal productive activities.

Q. Would you say the same thing about the workmen's compensation coverages in various parts of the state or in several states?

A. Yes.

Q. It has been testified by a witness for the defendants that in such a case, if the producer is a non-resident, the assured loses what this witness calls the contact of the agent on the risk. Please say whether you think it is a correct statement or an incorrect one.

A. I think it is an incorrect statement based on lack of full consideration for fact. The assured doesn't lose any advantage of local contact with the agent because on such a risk the real assured is not at the site of the cover in the state.

[fol. 1117] Q. This witness says that the non-resident is not available instantly when service on the risk is needed

and that at removed locations immediate company facilities are not available. What do you say to this?

A. I would say that wherever the companies provide cover they provide some sort of an arrangement to service it and that the services would be available.

Q. This witness acquiesced in the thought that it is important to the rendition of proper service for a producing agent to be what the attorney called "personally familiar with the facts and circumstances attending the risk involved." Will you kindly say whether, in your opinion, a resident producer would ordinarily have any greater opportunity than a non-resident one to become personally familiar with the facts and circumstances attending the risk? I am speaking of these interstate fleet risks and compensation risks?

A. While the non-resident producer might not have knowledge of the risk from personal contact, he would have all of the knowledge essential to handle it from the reports of inspection that would be made available to him through the engineering department of the carrying company.

Q. Would he not have the advantage of the information in the records at the principal office of the assured in the locality where he was producing the business to become personally familiar with the facts and circumstances attending the risk?

A. He would have the advantage of those, yes.

Q. Would you consider it more important to have personal familiarity with the facts and circumstances that could be developed at the insurance placing office of the assured where its insurance managers and representatives are [fol. 1118] located and its insurance records are kept, or for him to have personal familiarity with facts and circumstances with which one could become familiar ordinarily in the locality of the coverage?

A. I would say it is much more essential that he have the information available from the location at which the records of property are maintained and the insurance placed than at the site of the plant for the reason that at the site of the plant you are dealing just with the physical property in so far as the placing agent is concerned and that can entirely adequately be covered by an inspection report.

Q. Does your company make any distinction between the non-resident producer and the resident producer in respect

of the claim department reports it transmits to them and the engineering department reports and recommendations?

A. No.

Q. Do they have the same information about mounting loss experience or other dangerous conditions sought to be observed by the service departments?

A. Yes.

Q. Would you say that the principal office of an out-of-the-state assured in the locality of the non-resident producer provided adequate equipment by the authority resident there to cause local employees of the assured in the states of coverage, who have neglected to follow safety recommendations, to change their course and follow the same or would you consider that the presence of an agent in the locality of coverage is calculated to increase the likelihood of local employees of the assured following safety recommendations? [fol. 1119] A. I would say that if the local representative of the assured were not inclined to voluntarily cooperate with the company's engineering department, there would be small hope of securing that cooperation through any other means than having definite instructions sent down from his Home Office.

Q. About what is the average premium on contracts written in your office?

A. Approximately $40.

Q. What is about the average life of each contract written there?

A. Between fifteen and sixteen months.

Q. Would you say that the average Virginia resident agent would have the same average premium and length of life of contract as your office or a smaller or larger one?

A. I would say that our volume is about typical.

Q. In the course of your efforts to get agents of companies other than the Travelers Insurance Company to represent your company, does it often happen that they object on the ground that they do not want to give up the service facilities of the company they represent?

A. We very frequently run into that.

Q. Do you ever have these people express an unwillingness to give up the claim and engineering service of the company, other than the Travelers, which they are representing?

A. Where you run into the objection, it is one or both of those.

Q. Do you find you are always able to convince them that these services of your company are better than the corre-
[fol. 1120] sponding one of the company they represent?

A. By no means.

Q. How many separate contracts, on the average, would you say result from a hundred solicitations of non-customers by a soliciting agent?

A. It would ordinarily average from eight to ten percent.

Q. Suppose that agent is soliciting people who are already his customers, would he get more contracts or less?

A. He ought to do about fifty percent better.

Q. Do you have what you regard as a reasonably accurate opinion as to how much of an agent's business will, in the natural course of events, go off of his books each year, that is, the business he has at the beginning of the year?

A. We figure the turnover is about twenty percent.

Q. Are there substantial differences in the way the casualty and bond businesses are conducted among the various states and the way the personnel of the company and the agents act in the same situation or have you found them all generally in conformity throughout the six states?

A. There is very little difference. All of my territory is southern territory and a person at home with field conditions in Virginia would be at home with the conditions in any one of my six states.

Q. Do the Fidelity & Casualty Company branch offices, other than the Richmond one, operate according to the same or different plans and with the same or different personnel, having similar or different duties from those in the Richmond branch office.

A. Variation would be only in size in proportion to the volume. They all operate under the same branch office manual of instructions.

[fol. 1121] Cross-examination.

By Mr. Staples:

Q. Mr. Adair, there is nothing which is contained in your former testimony in this case which you retract, is there, or which you regard as untrue?

A. I don't believe so, sir.

Q. You think everything you said in your former testimony is correct, don't you?

A. I think so.

Q. Do you know any of the engineers of any of these other companies?

A. No sir. Where I principally come in contact with the engineering organizations of the other companies is through what my own agents tell me of the activities of those organizations.

Q. So what you are testifying to is just what somebody told you?

A. General information, yes, sir.

Q. And you don't really have any knowledge at all about what these other engineering departments do, other than what you have heard?

A. Not except as I may find out in the competition I have to meet.

Q. In talking with your own agents?

A. Yes, sir.

Q. And your own agents naturally wouldn't know much about what the inspectors of other companies do, would they?

[fol. 1122] A. They know the competition they meet and in this day and time in our business the competition is on engineering and claim service because, after all, with all of your larger companies, you have got relatively the same financial responsibility, you have almost identically the same contract forms to sell, so that the difference in what you get when you buy from one company as against another is the service that they are organized to render under their contracts which are identical with those of the other companies.

Q. Then you give to your inspection and engineering service in Virginia credit for the business built up here rather than to your own production department, do you?

[fol. 1123] A. If they don't service it properly after we put it on the books, we have thrown away money putting it there.

Q. I asked you which ones you gave credit to for the production of the business, whether you considered that due to the efficiency of your office or of the engineering office, or both?

A. I attribute it to the sales ability of the production organization and the servicing ability of the claims and engineering divisions.

Q. Like a stock salesman can sometimes sell some phony stock?

A. Yes, sir, but he can't keep it sold and business you put on your books this year and lose next year is costly business.

Q. That same thing is true of resident agents, isn't it?

A. Yes, sir.

Q. They have to service their claims and their contracts just the same as the inspectors have to service them?

A. Yes, sir, and the companies and the agents stand or fall together.

Q. You don't regard the agents that are working under you as obstructions to the operation of your company, do you?

A. No, sir.

Q. You don't agree with Mr. Murphy about that, do you, or do you agree with him?

A. There are occasions when an agent will get off on the wrong foot on the matter of some recommendation that has been made on a risk of his but those sort of things are apt to happen in any business and I wouldn't say, certainly in our organization, that they are common occurrences.

Q. As a matter of fact, the agent is probably doing what he thinks is right and thinks the inspector or engineer is [fol. 1124] trying to make his client spend more money than he ought to?

A. I dare say that is frequently true, yes, sir.

Q. So that an agent in a case of this kind thinks he is rendering service to the assured and the assured no doubt agrees with him on that point. Don't you think that is true?

A. I think that is very frequently true, although in some cases it unquestionably results from an agent's lack of grasp of what is really involved in the recommendation.

Q. But you don't believe, do you, that a resident agent could build up a successful business by continually opposing a proper improvement in the conduct of his client's business?

A. I don't believe, sir, that any successful agency regularly does that or frequently does it.

Q. In other words, an agent who did a thing of that kind when he thought he was doing wrong would be more or less cutting his own throat, wouldn't he?

A. He wouldn't last long.

E. J. SUTCLIFFE, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you state your profession?

A. Chief Underwriter, Employers Group.

Q. Is that the Employers Liability Assurance Corporation?

[fol. 1125] A. Employers Liability Assurance Corporation, Limited, of London and also the American Employers.

Q. Where is your office?

A. At 120 to 124 William Street, New York City.

Q. What is the style of that office? Is it the New York branch office?

A. It is the New York branch office. The Home Office is in Boston.

Q. Have you at my request examined the records of that office bearing on certain lines of coverage, including a fleet automobile liability coverage for a tobacco corporation which your company carried up to the fall of 1934 and of which Marsh & McLennan was the producer and which your company then cancelled and it was taken over by Travelers Insurance Company, which has been described by the testimony in this case as covering units in Virginia, North Carolina, and elsewhere and perhaps with sixty units, or thereabouts, and ten or twelve places of principal garaging and use.

Mr. Staples: I object to going into any specific case as contrary to the agreement, as I understood it, which has been made in this case.

A. I have looked into such a risk.

Q. Please say as to the fleet automobile liability coverage whether Employers simply failed to renew an existing contract at its yearly anniversary or whether the risk was cancelled pending the expiration of the contract?

[fol. 1126] A. We renewed the policy and then cancelled it mid-term.

Q. Please say, according to your records, why did the company cancel that coverage?

A. I have two letters here. One is a letter of June 18, 1935, which is from our Home Office Production Depart-

ment, asking me to see what I could do in the way of business for this particular risk. I replied to that on June 19th and stated that we were forced to cancel the risk, due to poor experience and, for that reason, there was very little chance of securing more desirable lines.

Q. Can you say whether or not inability to service that risk or unwillingness to service it was the cause of the cancellation?

A. Our corporation is equipped to service any risks in the states and I don't believe that we, under any circumstances, would ever say that we were unable to do so or did not want to service a risk. It seems to us to be to our best interest to service any risk that we have got, whether it is running good or bad.

Q. Having examined that file, are you able to say whether or not the loss experience over the five years you carried this coverage was within the pure premium or in excess of it and, if it was in excess of it, whether it was substantially in excess of it?

A. Our loss ratio for the period of 1930 to 1934, inclusive, was 165.3 percent by taking our actual earned premiums as against the incurred losses.

Mr. Christian: I have cooperated with Mr. Staples, as he has cooperated with me, in keeping the names of assureds out of this record upon the assumption that neither com- [fol. 1127] panies nor agents would want to bring the names of particular assureds into it but we have, off the record, identified this corporation and I am glad for him to look at this file and ascertain the name of the corporation so that if there is any possible mistake in the identification of the risk he may put Mr. Tabb back on the stand and show that this is not the same risk. I also state that off the record he and I have freely stated to each other the name of this assured so he has the opportunity to show that Mr. Sutcliffe is talking about another risk than the right one if he finds from Tabb that Tabb could support such a claim.

Cross examination.

By Mr. Staples:

Q. Did your safety engineers make recommendations that they thought would bring the risk within what you would be willing to continue?

A. From our records I can't answer that because we went off this particular risk on November 1st of 1934 and the records shortly prior to that time were all destroyed, and it is just from this information here, that hasn't yet reached the point where it would be destroyed, that I am able to tell you what I have just stated.

Q. Wouldn't it be the duty of your engineering department to thoroughly study the experience in having accidents and losses of the risk you speak of and make recommendations to the assured as to what should be done to remedy the bad experience and improve its condition?

A. That is the usual practice, the way we work it now, to make the underwriters, the claims divisions and the engineers work together.

Q. Isn't it pretty obvious then, from the fact that you cancelled the risk, that your engineers were not able to [fol. 1128] convince the assured that it should take such steps as were necessary to make the risk a desirable one?

A. No, I wouldn't say that. There are situations that arise that even though the assured may be the most cooperative that you could possibly find, they would not be able to improve the risk. I don't say that holds good in many instances but that is a fact.

Q. Give me an illustration of what you mean?

A. Unfortunate happenings, where a particular employee would take it upon himself to do something that he knew was against the rules of his employer.

Q. That situation would be remedied by the assured severing his connection with the employee, would it not?

A. There are naturally many penalties that many employers inflict upon their employees for infraction of the rules. We have any number of systems that the employers set up, with our help and with their own methods.

Q. What I am driving at is this: If your engineer discovered this trouble with an undesirable employee who had not followed the rules of the employer, he naturally would call that to the attention of the employer, would he not, and he would also recommend that that man be discharged?

A. No, he would not recommend that he be discharged. That is something that insurance companies, I think are staying away from. We are not in position to go in and recommend that a man's job be taken away from him.

Q. It has the same effect if you say that the man——

A. We state the facts.

[fol. 1129] Q. Let me finish the question. I say it has the same effect as recommending the discharge if you point out the fact that the man is disobedient to the employer's orders and, therefore, is producing a heavy loss to the insurance company and also running up the loss experience rating of the assured, does it not?

A. I would say, in answer to that question, that when we submit such facts to the employer or the man who is in charge of any safety organization, he uses his best judgment about disposing of such a man but I do say this again that I don't know of any instance where our men have recommended that a man be discharged.

Q. Do you know whether your records show what was the particular difficulty with this risk or the remedy which was suggested or whether any remedy was suggested by your engineers?

A. Our loss ratio under the automobile portion was 676.5 percent. It was a premium of $8,000 and there were losses of $54,000. With the balance of the line, on an overall loss ratio, we had 165.3. The premiums were $45,000 and the losses $71,000. That is the reason that we wanted to get off the line. In answer to the second and third questions, I haven't any record of recommendations that were made to the insured to improve the risk.

Q. Or whether or not the insured refused to comply with the recommendations?

A. I haven't any knowledge of that either.

Q. Naturally your engineers must have studied the prob-
[fol. 1130] lem and made some recommendation? That would be the ordinary practice, wouldn't it?

A. I would say yes, but I haven't gone into that phase of this particular risk. You see in our office we hold records for five years and then they are destroyed. I have a file here that is all that we have and there isn't any information in there about what we recommended and what was the attitude of the assured.

Q. I am asking you about what would be the customary practice in a case of that kind? Wouldn't it be customary for your engineers to study the problem and find out what was causing all of this loss, or try to find out, and make their recommendations to the assured to remedy the difficulties and troubles which they discovered?

A. That is the procedure that is used.

Q. So that if your company cancelled the risk the probabilities are that it was because the assured declined to comply with the recommendations of your inspector or engineer, isn't it?

A. No, I wouldn't say that. I say this, as stated in this one letter that I have, that it was because of poor experience that we got off the line. We may have secured the most wonderful cooperation from the assured but still our losses persisted and, according to our records, it was purely from a loss ratio standpoint that we took the action in cancelling those policies.

Q. Isn't it true that that loss ratio would have to be due to one of two causes, either incompetent or reckless drivers or improper equipment?

A. The answer there is no also. I can see that you can have a careful driver. I will withdraw that, if I can. You [fol. 1131] can have a driver who is not careful and have poor equipment and yet you will have some pedestrian step off the road and cut you off and you are in on it. I don't say that holds true in all cases but usually you will find that is the case, that you have got poor equipment and a poor driver and that is the reason for it because if you have got that it stands to reason it will follow through with poor operation.

Q. If the driver is careful, the mere fact of an accident doesn't impose any liability on your company, does it, unless the driver is guilty of negligence?

A. I have one case here that I have only got the bare outline of. The actual claim record I don't know whether we still have or whether it is in one of the southern claim offices. From my records in this particular case, and this is the first report (it is a flash really) it says the assured's truck was parked on the side of the road and claimant ran into the rear of same. We had a fractured pelvic, laceration of the left side of the forehead, abrasions and contusions of the body and what have you? We had four claims from that one accident.

Q. That was an act of negligence, wasn't it, on the part of the driver?

A. The assured's truck was parked on the side of the road. Whether he was improperly parked or wasn't, I can't tell from these records.

Q. He must have been improperly parked.

Mr. Christian: Let him finish his answer.

A. I can't say from the records I have here. It doesn't say that he was improperly parked or that he wasn't but from the four cases that arose out of that accident we paid the total losses and expenses of $46,541.

[fol. 1132] By Mr. Staples:

Q. It is not very likely that your company would have paid out all of that money if they hadn't thought the driver was negligent, is it?

A. I don't believe they would.

Q. That is what you paid for—negligence—isn't it?

A. That is all. As I say, I haven't got the facts of this case. The accident occurred December 15, 1933, and dragged out. The last report I have is January, 1936.

Q. Was that one of this same company's trucks?

A. Yes.

Q. So that after all, there are only about two kinds of negligence that could make you liable, aren't there? One is reckless driving or parking or improper handling of the vehicle by the operator and the other is negligence in failing to maintain the equipment in proper condition? Is there any other type of negligence that you know of that would impose liability on your company?

A. I don't know offhand what other types there are. I would think we could hold it down to the blanket term of negligence on the part of our assured. Naturally, we are not going out and pay any such sums as this if we are not negligent or if our assured is not negligent.

Q. If your service man made a careful study of the situation and found the sources of the trouble, it looks like he would have been able to suggest a remedy that, if the assured had been willing to follow it, would have made you think the risk was still a good one in the future? In other words, if he had a negligent bunch of drivers and that was [fol. 1133] reported and the assured had said he would get rid of these drivers and get some more careful men and would also keep the equipment in good condition, and you could inspect them and see that, wouldn't that have changed the outlook on the risk entirely?

A. There is a usual set plan that our engineers follow in servicing not only automobile lines but any type of risk

where the human element is involved and, from general experience of our corporation and that which we learn from others, they set a plan and try to work that plan. From there on the plan is changed according to the accidents that occur. In this particular accident I do not have the details. I don't know what service our men did effect or try to effect.

Q. Isn't it also a part of the service of your company to instruct these drivers so that they won't commit these negligent acts?

A. Yes, that is the first thing that our engineers try to do is to get the assured to get his drivers together and then talk to the drivers and instruct them and see them driving, rules of the road and reporting of defects in their equipment.

Q. The fact that there were so many accidents would indicate that your service man hadn't been able to accomplish as much as he possibly might have along that line, doesn't it?

A. One bad crack that I mentioned here was the result of one accident.

Q. You wouldn't decline a risk because you had one accident, would you?

A. I might. It isn't my general practice, no, or the general practice of our corporation to do that but the condi-[fol. 1134] tions surrounding that particular accident determined our course.

Q. You say that the Travelers Insurance Company did go ahead with the risk after you declined it, isn't that true, or, at least I believe Mr. Christian stated that in his question?

A. I have a letter here that states we were trying to get our policy releases back and one of our underwriters who, at the present time, is no longer with us, stated that the risk definitely had been replaced as of November, 1934, with the Travelers Insurance Company. This letter was written because of the fact that our Home Office was following us up to find out if the cancellation actually took effect and if there was evidence of it.

Q. The Travelers had access to all of that experience history that you have, didn't they?

A. No, they didn't. They may have asked for it and may have gotten it but my files don't indicate that they did.

Q. They would require that before they would write the policy if they followed their usual practice, wouldn't they?

A. That doesn't hold true. We exchange experiences on risks. The New York office of the Travelers and our New York office are very friendly. We know all the men there and if there is anything that looks kind of "hot" to us, we will call them up and they will give us the story and yet in other parts of the country you don't find that to be [fol. 1135] the case.

Q. Who makes up the experience rating?

A. The experience rating? I don't know whether the Virginia Bureau was doing that at that time or not. Here we had a risk that covered in more states than Virginia. The Travelers may have gotten this. I don't know. But it doesn't hold true all the time.

Q. But there is some rule that this assured and also your company would report it so the experience rating could be made up, isn't there?

A. Our experience would have been reported to any Bureau that had jurisdiction.

Q. It naturally was reported in the ordinary course of events, wasn't it, or should have been?

A. We are a non-Bureau company. There are certain bureaus that the Travelers belongs to that we do not and we would not report to those bureaus. They may have gotten part of the experience from a bureau that we would be forced to report to but I can't say that they secured our entire experience.

Q. You can't say that they didn't get it, can you?

A. No, I can't.

Q. If you were about to take over a risk that had been declined, as an underwriter you certainly would want all the information you could get about why that risk was declined, wouldn't you?

A. Certainly, I would.

Q. You don't think the Travelers Company would be any [fol. 1136] different in that respect, do you?

A. I can't answer for the Travelers. I can only answer for myself.

Q. The Travelers is a first-class company, isn't it?

A. Yes, sir, the Travelers is a first-class company and, as I say, in the New York office here——

Q. It is a very successful company, isn't it?

A. The Spectator will prove that.

Q. So they evidently follow good practices in their under-

writing or they wouldn't have such good results? Isn't that true?

A. That is true. As an underwriter I am forced to agree with you.

Q. Isn't it very probable that the Travelers Company, when this risk was mentioned to them, made a study of the problem down there and evidently thought they had solved it with their engineering department to the extent that they were willing to take the risk in spite of the bad history that the risk had? In other words, they may have required a change of drivers or an improvement in the equipment or whatever was the source of the difficulty that your company was unable to overcome with its service departments?

A. Well, it doesn't hold true all the way that just because the risk is bad a company won't take it. I have taken risks that were bad and other companies were getting off and if a man starts down here at John Street and goes up the line, in and out one door after another, he will come away with a binder and I don't care how much of a dog it is.

Q. Do you know whether the Travelers is continuing to carry this risk?

A. I believe they are still on the line.

[fol. 1137] Q. And that has been how long ago?

A. From my records here, they picked it up on November 1, 1934.

Q. That has been between four and five years that they have continued to carry this risk and they evidently haven't met with such bad fortune that they have rejected it?

A. You can't be sure of that either. Some companies will take a broker's or an agent's entire account and if they can make a profit over all, they are going to stick with the dogs and also the good ones. Other companies will try to underwrite the individual risks. It may possibly be that the particular producers' writings were so large that, fitting into a line that had been unprofitable, would not have made much of a difference in his overall. He may have been ripe for an accommodation line. So there are so many things that enter into the business as between brokers and companies and agents and companies that you can't really pin it down to a line.

Q. You think they might have covered other risks that were profitable that would offset the losses on this particular risk?

A. Their accounts over years may have shown up a profit.

Q. And you don't know whether the Travelers has had a successful experience with that risk or not?

A. No, I do not.

Q. If they have had a successful experience with that risk, would that indicate that their service department has been more successful in handling the situation than yours was?

A. No.

[fol. 1138] Redirect examination.

By Mr. Christian:

Q. Mr. Sutcliffe, when you spoke of risks as though they varied only with the degree of negligence or care of the drivers and the efficiency or inefficiency of the equipment, I got the impression that in the argument between you and Mr. Staples you were admitting those were the only things that caused variations in accident frequency experience on a risk. Until I had heard that discussion I was under the impression that notwithstanding people used the same kind of equipment and exactly the same kind of drivers from the standpoint of care they exercise, and performed the same tasks that an accident frequency experience on the one risk might vary from the accident frequency experience on the other risk from traffic conditions or the territory through which the men do this task or from the hours or work that are imposed on the men or from whether the men at the beginning are as highly paid and competent and intelligent men as others, and so on. I ask you now am I right that there are other factors than the two you and Mr. Staples mentioned or is that an exhaustive enumeration of the factors that will determine experience on a risk?

A. No, I didn't say those were the only two factors. I replied to that question stating that the blanket word "negligence" would have to be used because I couldn't pin it down. I think there were two questions that you gave me.

Q. But an underwriter will often see a cycle of different experience, depending on traffic conditions and where the operation is conducted?

[fol. 1139] A. Yes, that is always considered—what caused the accident.

Q. In addition to that, am I not right in thinking that accident frequency experience and loss experience may vary greatly between individual risks? That is, on some risks

you get accidents that don't cause big losses and on other risks, without any apparent cause, you get accidents that do cause big losses?

A. Certainly those conditions exist.

Mr. Christian: I also offer in evidence the quotation by "The Eastern Underwriter" in its August 26, 1938, report of the Canadian Insurance Superintendents' Annual Conference of the part of the report of the Fire Insurance Committee of the association of superintendents in the Provinces of Canada, bearing on resident agency laws.

Note: The following is a copy of the portions of the article referred to:

"Resident Agent Law

"A major portion of the report of the committee was devoted to discussion of the resident agent law. It submitted the text of this portion of the law of each of the Provinces, except Quebec. In general they require that policies covering risks in the Province shall be countersigned by a resident agent who shall receive the commission or some part thereof. The Alberta law provides that the agent's portion shall not be less than one-third of the whole commission. Some laws permit head offices to countersign policies 'on behalf' of a resident agent, but require that they shall report details of such policies to the resident agent.

[fol. 1140] "The committee says that experience has shown that agents, especially in western Canada, require the protection of a resident agent law. It suggests that a uniform law may be drafted 'on the principal that the resident agent law is a matter of the payment of commission to a resident agent.' It says in part:

" 'In considering the drafting of a uniform law there are certain questions with regard to which we should, if possible, have unanimity of opinion. Should a resident agent law be made applicable to all classes of insurers? Should there be any distinction between insurance covering physical property and insurance of the person? Should an exception be made as regards those insurers who do not use the agency system or should a company be compelled by law to have agents? The reasonableness of requiring any resident agent's approval of the issue of a contract should be carefully reviewed in its relation to business of the public. Is

it advisable to set out in the statute the rate of remuneration which must be payable to the resident agent or should that matter be left to the accepted principles of brokerage? Should it be a legal requirement that copies of policies or countersigned policies be held by the countersigning agent and is the expense commensurate with any benefit that may be derived from such a requirement? It may be that some amendment to subsisting legislation could be drafted which would carry out the intent and spirit of a resident agent law without interfering with business as a whole and without adding to the expense incurred by the companies in the matter of acquisition cost.

[fol. 1141] "Difficulties With Law

"'The failure to have a policy countersigned by a resident agent does not in any way render a contract invalid as against the insured. Undoubtedly the whole purpose of the resident agent law is a matter of the payment of commission to a resident agent in the province in which the subject matter of the insurance is situate. In none of the acts appear the words 'local agent' which would localize the payment of commission but the reference is to a 'resident agent who holds a certificate of authority from the superintendent.' Many of the companies have experienced difficulty in complying with the provisions of the act in cases where the insured has expressly asked that the commission payable under the resident agent law be paid to a specified agent, thus conflicting with the regulations of some of the associations.

"'Your committee has questioned many insurers as to the method of securing the countersignature of a contract across Canada and the time involved in complying with the requirements of the various provinces. Some insurers have advised your committee that it takes from three to six weeks depending, of course, on the prompt attention given the requirement by the resident agent who has been asked to countersign the contract. The countersigning of a contract across Canada involves an added expense and there are undoubtedly delays in the issue of the contract to the insured who wants his business transacted promptly and it might be that business other than insurance is affected by such delay. Accepting the principle of the resident agent law and granting that details in connection with it are more or less a matter of concern to the particular

[fol. 1142] province, nevertheless, your committee is of the opinion that the effect on business as a whole and the delays and expense involved in carrying out the provisions of the law can be obviated by an amendment to the insurance acts of those provinces in which such a law is presently in force which would carry out the recognized principle of the resident agent law and especially with regard to blanket or schedule contracts covering property across Canada.

"'To simplify procedure, your committee therefore recommends to the conference the consideration of an amendment to subsisting law to the effect that:

"'An insurer issuing a contract of insurance which is required to be countersigned in accordance with the provisions of this section shall be deemed to have complied therewith if it files with the Superintendent of Insurance of the province in which the contract has been issued a statement duly verified by the insurer in a manner satisfactory to the Superintendent, showing:

"'(a) the name and address of the insured;

"'(b) the amount of insurance covering in each province effected under the contract;

[fol. 1143] "'(c) the amount of the premium on such insurance in each province; and

"'(d) the name of the agent or agents in each province to whom commission on such contract will be paid and the amount of such commission.'"

William C. Thomas, a witness called on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Please state your present business connection and occupation?

A. I am a partner of Flynn, Harrison & Conroy, Insurance Agents and Brokers, 99 John, New York City.

Q. What was your occupation prior to the time you became a partner in this firm?

A. Manager of a general agency in Pittsburgh, Pennsylvania. That was over twenty years ago.

Q. And how long have you been in New York City. Since then?

A. Since then and before then, as an underwriter previously for one of the casualty companies.

Q. Will you please give me a general description of the personnel in your office, how many people there are, and what they are supposed to do?

A. We have three partners, we have a Fire Insurance Department, a Life Insurance Department, a Casualty Department, a Bonding Department, engineer and clerks. We have in all about 24 people, exclusive of partners.

Q. If there is any general way in which you could characterize your business, I would like you to do it?

A. We do a business in excess of a million dollars.

[fol. 1144] Q. Of premiums per year?

A. That is right, all direct business.

Q. Do you consider your firm a large one or a small one, comparing yours, for instance, to Marsh & McLennan, and Johnson & Higgins?

A. We would not be in their class but we are considered a fairly large concern.

Q. Is there any substantial volume of the business of your firm in casualty, surety and fire lines which covers in other States than New York?

A 75 percent at least.

Q. What sort of casualty and surety risks are included among those produced? Just a limited number or all the various lines of casualty and bonds?

A. It covers practically the entire field of insurance.

Q. Could you enumerate specific states where this coverage exists, or is it more or less countrywide?

A. Countrywide.

Q. Are these risks which are countrywide usually rated by manual or are they equity or experience rated as a rule?

A. That all depends on the risk and the type of business.

Q. What are the lines of business in which the assureds are engaged?

A. They are nationwide manufacturers and distributors and financial institutions, wholesalers and contractors.

Q. And some of them are natural persons?

A. Some of them.

[fol. 1145] Q. In this case the question has arisen whether the New York producer is able to produce this business covering outside of his own locality because of his personal

relations with officers or directors of assureds and the desire of these latter people to see a friend or relative receive commissions or whether there is a sound economic reason for the producer in a metropolitan area occupying the status of the producer of this business covering elsewhere? I will ask you to say from your experience which is ordinarily the fact as to this?

A. I can only reply as to our own organization, that our business is, most of it, obtained on a competitive basis.

Q. Describe the process yourself, beginning when you decide that you want to try to get a line of business and carrying it through for a period of years after you get into it.

A. First, you have got to make your contact. That may be made in many ways. It may be made through friendship or financial connections or various other ways. The next step is to persuade the prospective client to make a survey of his insurance on a competitive basis, understanding that if we can improve the prior program the business will be placed with us and, if we are successful and the man carries out his word, the business is turned over to us in its entirety. From that point on we proceed to carry out the program that we have outlined.

Q. What is the usual amount of working days that a person like yourself and his assistants would put in between the time that the idea first comes into his head of establishing this relationship with an assured and the time the survey is completed and you come to occupy the position to him of his insurance broker?

[fol. 1146] A. That can vary from one week to two or three years. We have had accounts we have worked on for three or four years before we have finally broken through and some we never break through.

Q. Do you find that his having confidence in you to preserve inviolable what he tells you about his business secrets plays a part in his willingness to let you look into his business or does he let any Tom, Dick, and Harry who comes along know all that he will tell his broker?

A. No, we have certain people, financial and otherwise, that we can refer to as references as having done business with over twenty years, and some of those references carry considerable weight.

Q. I want you to develop, if you can, what you think is the economic justification for what defendants' attorney calls giving these local agents the run-around? What does an as-

sured get out of it? What does this country get out of people like you?

A. Let me say at the outset that if we had to divide all of our commissions with local agents we wouldn't be in business, couldn't afford to be in business. We deal with concerns who, for economic reasons, wish to concentrate their insurance buying at one point. They wish to deal with one firm or corporation and don't want their business spread all over the country through a hundred or more general agents. By concentration they can effect considerable economy in cost. They can improve their coverage by dealing with a highly technical organization that has the means to specialize in the various forms of insurance, and they have one person or one corporation to hold responsible that they are in daily contact with which would be impossible if that business were to be spread all over the country. It would be [fol. 1147] cumbersome and expensive. That is the method by which we obtain the business. We handle all the contacts between our client and the company, dealing direct with the company.

Q. If I have a need for insurance coverage covering an automobile fleet that operates nationally, is there any advantage to me to have the coverage in one particular company rather than to have it scattered around among different companies?

A. There is a decided advantage in concentrating.

Q. If I were a gasoline distributor, for instance, over the country, would there be any benefit to me and, if so, what would be the benefit, in having all of that coverage in some one company like the Travelers instead of having it scattered through a dozen companies?

A. You certainly increase your buying power. You build up a premium wall by concentration and you are assured of standardization of service. Besides your local cumbersome rating details, such as fleet discounts and various other rating factors, it would be extremely cumbersome to get all those together and get them separately insured in various localities and you lose a decided advantage.

Q. How does an assured gain, after he has his coverage, from having a person like yourself to contact and hold responsible for everything about that coverage over the country? For instance, is his communication with you an easy thing or a frequent thing?

A. It is a frequent thing. There are frequent meetings held and constant telephone conversations. We have our engineer constantly calling at various points. We have each department head taking up his problems with the insurance buyer or the insurance manager, whatever he happens to be. [fol. 1148] I would say that we are in daily touch with our principal assureds.

Q. Please say, when you produce these coverages, whether you always place them with a general agent of the company or whether they are always subjected in some other way to additional acquisition or production expense beyond what you receive?

A. We deal directly with the companies and not through general agents or so-called Borough Agents here in New York. If the company pays any additional acquisition cost, it is something we don't concern ourselves about but if they do and we have any question as to experience, we will give no weight to any additional compensation that is paid other than what is paid to our own office which is composed of strictly brokerage fees, with the exception that we are, on surety business, a general agent of one of the larger surety companies.

Q. What is the name of that company?

A. United States Fidelity and Guaranty Company.

Q. Are you ever in a position where, instead of your producer's commission being maximum as stated in the Acquisition Cost Conference Rules, your commission is a lesser amount than that?

A. Our commission is that which the Acquisition Cost Rules provide for a broker with the exception of surety business which is placed with the United States Fidelity & Guaranty Company.

Q. On these equity rated risks is your commission always the maximum or does it come down?

A. On equity rates it is a matter of negotiation with the company as to what the producer's contribution will be and what the company's contribution may be. The commission may only be one-third of the full commission, it may be a half [fol. 1149] and, in some cases it may be the entire brokerage commission. That is a subject-matter for the company to decide.

Q. If you get only a third of the producer's commission on an equity rated risk, am I right in my impression that

in making up the premium that reduction is taken into account?

A. That is correct.

Q. How does such a producer go about selecting the particular insurance company with which to place any particular risk?

A. An insurance broker is dealing with all of the companies. He knows his markets pretty well or he should know them. He knows that one company will particularly fit the needs of a certain assured, whereas another company may not be fully equipped to handle the line. It may be a question of locality. Some companies are spread out in many localities and some are confined to certain parts of the country. You have to appraise the company and see whether they can render the service which your assured requires.

Q. You have no allegiance to any, as I understand, except in the case of the U. S. F. & G. Company?

A. No, and, strange as it may be, we do considerably more business with other companies than we do with the U. S. F. & G.

Q. You don't have any territory for it for which you are responsible?

A. No.

Q. Do you place business with a considerable number of these casualty and surety companies or just one or two?

A. Our business is pretty well spread all over the street among the larger companies.

Q. Isn't it also a fact, or am I wrong, that some com-
[fol. 1150] panies will have underwriters that will be more liberal in their views of certain sorts of risks than other underwriters for other companies and that therefore you would be influenced in your selection by taking business to a company which would view it more liberally from the standpoint of the insured if you could identify such a company?

A. That is true. That is true of all business. Certain underwriters like certain types of business and there would be a difference of opinion and an underwriter of another company will have nothing to do with that type of business. That is why a broker must know the market.

Q. You spoke of certain localities of coverage of a particular risk that you might think caused it to be more ad-

vantageous to you to place with one company than with another. Why is that?

A. Well, as an illustration, I will assume that I have a risk in Texas. I would be very foolish to place that with an insurance company that did very little business in the State of Texas and had no facilities for servicing it.

Q. Among the leading companies do you have any one company that you think is better in all lines of service than in the others?

A. No, absolutely not.

Q. Do you ever have occasion, after you place business with a particular company, to decide that you want to change that risk over to another company, even though the first company is still willing to carry it at the same rate?

A. That is done very often.

Q. What are the things that will lead you to make a change like that, as a rule?

A. Poor service or a better price from another company.

[fol. 1151] Q. You do it on occasion because of poor service as well as, on other occasions, for better service?

A. I think we make the right choice in the beginning, as a rule.

Q. Do you find that your assureds question the wisdom of your selection of the company or question the wisdom of any change in the company when you change it or do you find ordinarily that they accept your views about that?

A. With the exception of financial institutions, we have only been directed by one client to place his business in a certain company. That choice is left entirely up to us.

Q. What is the distinguishing feature between financial institutions and other assureds with reference to that?

A. Banks like reciprocal business. If a company has a big deposit with a bank, it will naturally like to reciprocate and turn some of its insurance over to that company. They are solicited by the insurance companies on that basis.

Q. Would such a producer as you ordinarily be able to make a change from one company to another, assuming they are both companies that are reputable, without the assured or his representative in charge of placing his insurance making any comment on it at all?

A. No, we would never make a change without consulting our assured and telling them why we recommended the change.

Q. Your experience then is that they usually say "O. K.," or do they usually make objection?

A. So far they haven't.

Q. Do you ever find any of your prospective assureds are hooked up with mutual companies when you try to get business from them?

A. Yes, we do. We attempt to obtain that business and [fol. 1152] sometimes succeed and sometimes do not and some of our clients have part of their insurance in the mutuals.

Q. Have you placed it in those mutuals?

A. We don't place it there. From some of our clients we receive a service fee for handling it by their paying us part of the dividend they receive from the mutuals.

Q. Is it your policy, as a general thing, when you have a complete carte blanche about where to place business, to place it with the stock companies or mutual companies?

A. We are strong advocates of stock insurance. We have been brought up that way.

Q. Would you say that you would have ability, if you were so disposed, to place any of your customers' business in mutual companies?

A. I am afraid that if we got strongly in back of it that most of them would go mutual under present conditions.

Q. Have you ever found it expedient or advantageous to your assured for you to recommend to him that he put any part of his coverage in a company not admitted in a locality of the coverage?

A. No.

Q. You usually want it in a company that is admitted, do you?

A. Absolutely.

Q. Would that be so as to the surety business to the same extent that it would be as to the casualty business?

A. Absolutely.

Q. In making these surveys of which you speak and making up the insurance plan for the assured, is it your custom to go to the localities of the coverage or do you do that from here?

[fol. 1153] A. If it is necessary, we have an engineer who visits the various localities.

Q. How about after you have gotten the line and are serving it, do you find it necessary at times to go into the locality then?

A. Very often.

Q. What are the occasions that will make you go into a coverage locality?

A. Safety work particularly and educational work.

Q. Is it a rare thing or very frequent thing that you are required to go around to these coverage localities?

A. It isn't necessary as a rule unless there may be a particular top executive located out of the State whom we find it necessary to confer with occasionally, but where the entire insurance is concentrated in New York under a competent insurance manager, it is very seldom necessary to go out to the various localities.

Q. By what processes are you enabled to service automobile fleet liability risks and compensation risks without going to the localities?

A. So far we have produced results. The business has been increased here, so our method can't be very far wrong.

Q. Who does that servicing work where it has to be done in the locality, if you don't do it?

A. We outline to the company just how we wish it handled and try to standardize the way it will be handled in all localities and that is done by negotiation right here in New York and we have reports rendered to us by the companies periodically and we have the experience submitted to us and [fol. 1154] accident frequency and various other factors that enter into. So we are constantly in touch with the situation all over the country.

Q. Through what personnel does the company gain the knowledge to make these reports to you?

A. Through its own engineering department.

Q. Do you ever hear anything from their claims department?

A. We have their claim department instructed to confer directly with us when necessary.

Q. Have you found in your experience emergencies arise that cause losses to assureds because you are not on the ground where the accident happens and in physical contact with the risk?

A. We haven't so far.

Q. How do you go about getting proper cooperation from local representatives of these assureds in the coverage localities when you don't know those men personally?

A. We outline a program which, as a rule, clears through a control department, or whatever you choose to term it,

and instructions go out to these various managers as to what is expected of them and how they are to handle their insurance affairs or anything pertaining to it.

Q. Where is that control department located?

A. That control department is located at the head office.

Q. And that would be here in New York?

A. Here in New York.

Q. When coverage questions arise in the various localities are you advised that a coverage question has arisen?

A. Yes.

[fol. 1155] Q. What do you do then? Do you have to go down to the coverage locality to get that straightened out or what do you do?

A. We straighten it out with the head office and have the head office instruct their departments what to do.

Q. Do you find that you are delayed very much in doing that? I mean, does it take you a week or two, or do you pick up the telephone?

A. Do it over the telephone.

Q. Do you find that you are not able to efficiently represent these assureds because you don't have an agency contract with a company but are an independent man?

A. We don't want an agency contract. In fact, our sales argument is that we are not tied up to any individual company. In other words, we have the insured's interest or client's interest in mind rather than our own selfish interests.

Q. Is there any respect in which you owe any duty to the company?

A. None whatsoever.

Q. There was a suggestion that maybe a broker wouldn't have quite the entree to a company that an agent would have when a coverage question arises. Have you ever experienced that?

A. No.

Q. Where you are left free to decide the matter yourself, have you ever found it expedient to divide your producer's commission with local agents in these various coverage localities so as to have them interested in serving you and the assured and getting their help in furnishing services?

A. In a few instances, yes.

[fol. 1156] Q. Where you have found that expedient have you made an arrangement with such a party?

A. We have.

Q. Speaking generally about your business, do you generally find that there is any expediency for doing that—dividing commissions with local agents?

A. It seldom occurs.

Q. Do you ever have to make that division because your assured asks you to make it?

A. Occasionally, yes.

Q. What are the reasons for that?

A. Purely friendship on the part of our client who may know some real estate agent who has an insurance license.

Q. In these cases where you have divided your commission with an agent, either because the assured wanted you to do it, or for some other reason, have you found that that operates to relieve you of work and responsibility?

A. Only where we select the agent. Where we select the agent we go into a town and look over the various agencies and see if anyone is qualified to give the service which we are looking for.

Q. Do you have any specific agreement in such a case where you willingly associate him with you as to what his function is to be?

A. Absolutely.

Q. He just doesn't say, "You give me fifty per cent and I will cooperate with you?"

A. No. We outline to him what we expect him to do.

Q. Do you ever outline to him things you don't want him to do?

[fol. 1157] A. He is authorized to do only certain things which we communicate with him about. He uses no initiative whatsoever.

Q. Have you had the experience since these fifty-fifty laws and other laws about dividing commissions went into effect of the companies coming to you and telling you that they had to pay part of the producer's commission to agents in localities of coverage on casualty and surety lines and wanted you to give up part of your producer's commission so they wouldn't suffer any loss?

A. We have.

Q. What have you done in those cases?

A. Refused to accept any reduced commission.

Q. Have you been paid your full commission?

A. We have.

Q. Do agents in the localities of coverage ever make suggestions to the assureds, in these cases where you do have the association, for improvement of the coverage or correction of the policies, and so forth, or do they deal through you if they have any such suggestions to make?

A. They deal entirely through us and have no direct contact with the assured.

Q. Why is that?

A. We don't permit them to have. They are not authorized to have any direct contact.

Q. Suppose one of these agents is a member of some local agents' organization that requires him to contact the assured and thoroughly go into everything he can find out before he will countersign a policy, what are you going to do about it?

[fol. 1158] A. Not do any business with him.

Q. Suppose his company backs him up and says that they don't sympathize with your views, what are you going to do then?

A. Take it away from the company.

Q. Where you have told an agent that you didn't want him to contact the assured or where he has just been a countersigner and he exercises the benefit of the information he has gotten as to the kind of risk and he goes directly to the assured and starts asking questions and making suggestions, what has been your experience that the local representatives of the assureds usually do in those circumstances?

A. Where a few instances of that have occurred they have immediately got in contact with us and we have changed the agency.

Q. Where those representatives are locally approached and they refer those agents to you, do they refer it to their control office in New York and the latter refers to you or does the local man communicate with you?

A. Both. When they learn we control the line they many times solicit business for their agencies. Other times they go direct to the buyer of insurance and, as a rule, he will refer them to us just to save the embarrassment of turning the fellow down.

Q. Suppose one of these assureds had a plant superintendent in Virginia and one of these countersigning agents went to him and started making suggestions and asking questions, what would that plant superintendent do?

A. I can't tell you that except what has occurred with our business. We deal direct with the insurance buyer here in New York and plant superintendents have nothing to do with the insurance.

[fol. 1159] Q. Have you ever had the experience of local representatives in the locality of coverage making friends with insurance agents and bringing up the question with their superiors that they would like to give them some business or would like to have some way of giving some commissions to them?

A. Our business is controlled right here in New York. We don't have the difficulty with the local agent trying to work through a local plant superintendent.

Q. Can you recall any instances where benefits to your assureds have resulted from efforts of local agents to contact those assureds and criticize or try to improve what you have done for them?

A. The only time that a local agent has been able to do anything was when he was politically able to help a contractor in a local situation. That does occur.

Q. Is his help to the contractor in getting contracts or is that something about servicing insurance?

A. Nothing to do with servicing insurance at all but he is able to politically do for the contractor something in connection with the fulfilment of his contract, either in facilitating payments or changing orders, or something of that sort.

Q. It has been suggested here that producers always give up a part of a fire insurance commission to a local agent. What do you find brokers usually get when they produce fire business?

A. We don't give up anything. What the company, under its agency or franchise agreement, give to the local agent, we don't know. That probably varies.

[fol. 1160] Q. What will you average on your fire business?

A. I can't answer that but I can say that we average over all thirteen per cent.

Q. And it runs as high as fifteen per cent in some cases?

A. It may run as high as twenty but our general average overall is thirteen per cent.

Q. Does such a producer as yourself ordinarily keep a record of what agent has countersigned the insurance coverage in each of the several States?

A. Only where we initiate the transaction and negotiate with the agent to service the line in many respects, but where it is purely a countersignature we don't know who countersigns the policy unless we happen to look at the policy. We make no record of it.

Q. And when you deliver the policy to the insured you are left without any record as to who countersigned it?

A. It doesn't make any difference to us.

Q. What type of man usually places the insurance for these assureds?

A. He may be the Treasurer, he may be the Assistant Treasurer, or he may be the Insurance Manager.

Q. Is he usually a pretty well-paid man?

A. Oh, yes, an insurance manager, I would say, is a well-paid man.

Q. Does he give much time to it?

A. He gives his entire time to it.

Q. Does he have an interest in matters of accident frequency and of claims and the like?

A. I should think he would.

[fol. 1161] Q. What is the relationship between yourself, or a producer such as yourself, and such a man?

A. It would have to be a close one.

Q. Will he answer any question you ask him about his company, bearing on any insurance matters?

A. He will.

Q. And tell you anything you want to know about his business practically?

A. Yes, he must, particularly if he is interested in any surety lines. He must tell us anything we require, and furnish us financial statements and details.

Q. I was talking more about business secrets and company information that he gives you. Does he give you that freely or, when you ask certain questions, does he say he can't tell you that without the President giving him permission to talk to you?

A. There are times when we must go to the higher executives to secure information of that type.

Q. In those cases where your relationship continues with that assured, do you usually get the information that you need, no matter if it is considered confidential?

A. We have to have it.

Q. You mean you are not able to function without getting it?

A. No, he can't get what he needs unless he does furnish it.

Cross-examination.

By Mr. Staples:

Q. Does the United States Fidelity & Guaranty Company write casualty business as well as surety?

[fol. 1162] A. Correct.

Q. Do you have a non-resident broker's license in Virginia?

A. We have.

Q. Why did you take out that license?

A. We have business in Virginia.

Q. What kind of business do you do in Virginia that would require you to have that license?

A. We have fire, casualty, and we never know when we may have a bond as some of our clients are contractors that do work all over the United States.

Q. Do you divide the commissions with any Virginia agents under your brokerage license?

A. Not to my knowledge. We don't divide. We don't know what the agent receives from the company.

Q. Do you actually go down into Virginia and solicit business there?

A. No.

Q. Why do you have a Virginia non-resident broker's license?

A. We think that we have to have a broker's license wherever we have business located.

Q. Where did you get that idea from?

A. That is just our idea. We have been following that practice. We do not actually solicit business outside of two or three States which are confined to nearby localities.

Q. It is necessary for you to have a Virginia broker's license in order for the company not to pay a countersigning agent, particularly in the fire business, his full commissions and in order for him to be able to give the company [fol. 1163] credit for part of the commissions they pay you, isn't it?

A. I don't know except that I know that we have that license and I have always given orders that wherever we have business we shall be licensed as a non-resident broker.

Q. Do the companies request you to take out the license?

A. No, the company may ask us if we have a license. That occasionally occurs.

Q. What life insurance company do you represent?

A. We represent many life insurance companies.

Q. As agent or as broker?

A. In New York State you can't be a broker; you must be an agent. You must be licensed as an agent of every company you do business with. That refers to life insurance.

Q. What percentage of your business is life insurance?

A. Well, I can't tell you except to say it is a very small department but it is on a paying basis and we are making a little money on it but it is a small percentage.

Q. What about the fire department?

A. The fire department is also more or less of a pup.

Q. Your principal business is casualty?

A. The principal business is casualty and surety.

Q. You say you have an engineer employed by your office?

A. That is correct.

Q. Do you have more than one?

A. No, we have only one.

Q. And you write business all over the United States?

[fol. 1164]. A. That is correct.

Q. Does your office undertake to furnish cooperation to the insurance companies to persuade the assured to carry out the recommendations that these engineers make to improve the assured's plants or automobile fleets, or whatever it is, to reduce losses?

A. That is a big part of our work. We many times have to originate the program for the safety work with the cooperation of the company engineers.

Q. Do you have any trouble in persuading the assureds to carry out these engineers' recommendations?

A. Some of them, yes—a good many of them. It is an educational work.

Q. Do you find that these company engineers' recommendations are always reliable?

A. No. That is the purpose of employing an engineer in our organization.

Q. How often does your engineer have to go out of New York?

A. He is out of town very frequently.

Q. Twice a month?

A. He is out three days a week.

Q. Is it customary for your engineer to take a trip and look over every recommendation that the insurance company engineers make for changes in equipment or in improvements in plants or matters of that kind which affect the risks and are designed to reduce accident losses?

A. No, he is more or less of a trouble-shooter and he functions also in this manner, that he analyzes the company re-
[fol. 1165] ports of the engineers and, in turn, knows——

Q. What do you mean by a "trouble-shooter"?

A. If there is a particularly high frequency in one location or it has the appearance of needing attention, he may be shot out to that point to see what the trouble is, to see whether he can install a program that is going to relieve that condition.

Q. He doesn't so much review the recommendations of the other engineers as he does to try to initiate improvements, or what does he do?

A. He does both. Then the department head also supervises all of those recommendations that are sent out to our clients.

Q. What do you mean by the department head—in your office?

A. If it is a fire insurance matter, the manager of the Fire Insurance Department; if it is a casualty, the manager of the Casualty Department, or maybe the partners will review those various reports, particularly if they are important.

Q. How many different casualty contracts or policies would you say that your office has?

A. I couldn't give you any idea.

Q. As many as a thousand?

A. That is a hard question to answer. I couldn't answer that. There are bound to be a good many policies because along with the larger business there are many small personal accounts. How many automobile policies, and things of that nature there are, I haven't the slightest idea.

Q. Do you know how many States you have risks covering in?

A. That varies. We may have risks in 15 or 20 States or at one time we may only have them in five or ten States.
[fol. 1166] We have a large contracting business and those contractors go all over the country.

Q. Have you ever had any in California?

A. Yes.

Q. What percentage of cases in which insurance company engineers make recommendations for changes and improvements in plants and automobile fleets, and matters of that kind, do you think your engineer inspects?

A. He inspects all of them, or I hope he does. That is his duty.

Q. Would he go to California and inspect a risk out there?

A. If necessary, yes.

Q. I am talking about whether you think it would be necessary?

A. Just at the moment there is no risk in California that would require such service. I have been out to California in connection with business that we had and that business has been completed and there was no longer any necessity for anybody to go to California.

Q. You mean if you did have a risk in California with the Travelers, I will say, and their engineers should recommend certain changes and improvements to be put into effect by the assured, your engineer would go out there?

A. If there is any difference of opinion between the assured and the company and providing it was of sufficient size to warrant the expense.

Q. Do you ever have to stand between the company and the assured on what you consider to be unreasonable demands of the service department for making changes?

A. Let us put it another way. They are not unreasonable. There are a great many foolish recommendations made by immature men in the employ of the companies.

[fol. 1167] Q. That is a pretty substantial part of the agent's work, trying to prevent the insured from being imposed on by these engineers or inspectors that want to recommend the expenditure of a whole lot of money and probably unreasonably; isn't that true?

A. Largely so, yes.

Q. Would you call that an important service that you render in that respect, or not?

A. I consider it an essential service that we render.

Q. You say that this business is obtained on a competitive basis. What do you mean by that? I am referring to your business as a broker in the casualty line.

A. Unless we can recommend a better insurance set-up or program, we have no right to expect any prospective client to hand the business over to us unless we can show some improvement.

Q. Just what do you mean by a program?

A. An entire insurance program of all their insurance requirements.

Q. Can't you give me some idea? I really don't understand just what you mean by that?

A. You may have a casualty risk, you may have a marine risk, you may have a fire risk, and we take them to pieces and fit them together and make our suit of clothes and if it shits you we expect you to buy it as a completed garment.

Q. You mean in a case of that kind that you would figure out a different amount of insurance that a man ought to carry?

A. That might be part of it and it might be an appraisal would enter into the picture. You may be carrying too much [fol. 1168] or you may be carrying too little insurance and you may have exposures that are probably not covered.

Q. That is in fire insurance?

A. I am speaking of many instances in connection with negligence or liability insurance. There are lots of exposures that may not have been properly covered and we may find defective contracts.

Q. Do you call a risk an exposure in the casualty line also? Is that a term you use?

A. Yes, we use that straight through—an exposure.

Q. After you figure out what you think is a proper amount of insurance for the man to carry for protection in these respective lines which are component parts of his entire coverage, we will say part fire, part casualty, part surety and part life——

A. Life comes under a different category entirely.

Q. Do you combine the fire and casualty very often?

A. Fire, casualty, and everything else except life.

Q. The fire and casualty are frequently combined, are they not?

A. Yes.

Q. Then what do you do after you figure that out before you submit the matter finally to the assured or the prospective assured? Do you take it around to the various companies and see what you can do with it?

A. We take it to one company. We pick our company. We don't go shopping a risk, as we call it here in New York. We pick a company that we believe is going to play ball with us and we negotiate with that one company.

Q. What do you negotiate about? What is the subject of the negotiation?

A. The subject of the negotiation concerns the service, [fol. 1169] coverage, and price.

Q. You mean the rate?

A. We don't deal so much in rates as what the ultimate net cost is going to be.

Q. That is bound to be controlled by the risk?

A. That is true. It may be a rate or it may be a price. It all depends on the type of insurance.

Q. You mean that you wouldn't use a rate to arrive at the price?

A. Fire insurance carries rates and other types of insurance may have flat premiums. If you get into the rating features you can talk all day about it. There are many different bases of arriving at premiums.

Q. I believe you said that in arriving at the rate you would sometimes knock off half or two-thirds of your broker's commission so as to get the rate down?

A. No, you misunderstood me. I didn't say that we would. It is done. Equity rating as provided for calls upon the producer to make a contribution in commission. We won't handle any line unless we think we can make a profit. We can't handle business at a loss. So if the company will not write the line without our contributing commission, we just don't want their business.

Q. I thought you said that you frequently received only half or a third of the commission?

A. I was answering a general question of custom, but our individual office won't write business on that basis because we can't afford to do it.

Q. But that is customary among the brokers in the city, isn't it?

A. It is customary among agents. It is customary for [fol. 1170] the entire insurance fraternity to do that. It is one of the methods of competing with mutual insurance.

Q. And does that happen in a New York State risk also?

A. No, it is not permitted in New York State.

Q. It is not permitted in Virginia either, is it?

A. I couldn't tell you. There are certain open States where it is permitted. How many of those are left I couldn't tell you, but gradually they are being eliminated.

Q. That isn't anything in the world except a rebate to the insured of part of the commission?

A. Call it what you want, but it is the way of the companies of holding some of their business.

Q. They regard it as rebating in New York, anyway, don't they, under the State laws up here?

A. No, what they regard as a rebate would be a violation of what is known as our anti-discrimination law.

Q. You mean you have got to charge everybody the same rate?

A. To be modified with whatever experience plan the Insurance Department may approve.

Q. How do you go about trying to get a better rate for your assured than one of your competitors?

A. That would take me weeks and weeks. I have been in this business close to thirty years. I have been a company official and I have been a general agent, a broker, and there are certainly things we have learned by experience and we are not broadcasting them.

[fol. 1171] Q. I didn't mean for you to give up any secrets.

A. That is a very difficult subject to discuss and I can discuss that with you for two weeks and take pages of testimony.

Q. I believe though that you do have means of getting better rates than your competitors do in these types of cases or in some of them, anyway?

A. In some of them, or we wouldn't be existing.

Q. And that is the real competition between the brokers up here who try to get this big line of business—which can get the best rate out of the company?

A. It isn't the best rate. You don't look at it in a big way. We are talking about risks that produce possibly fifty or sixty thousand dollars or maybe 150 thousand dollars overall. If that isn't handled properly there can be a great deal of waste.

Q. What do you mean by overall?

A. I mean we are talking about an assured who will pay premiums in a year of $50,000 or $60,000 or $150,000. Often it isn't very difficult to see how you can save an assured fifte-n or twenty thousand dollars on a big risk. You can do that without the violation of any rating rule or organi-

[fol. 1172] zation.

Q. Give me one illustration?

A. I will give you one illustration of a risk that we took over a year ago. The year is almost up and we have demonstrated a saving of in excess of $25,000.

Q. I mean an illustration of how you did it?

A. We found certain types of insurance should have been combined, that they were entitled to certain discounts. We found innumerable policies where the combination eliminated certain policy fees. We found rates had not been checked on fire insurance for years. Without the expenditure of any money we were able to reduce those rates. We were able to take some of the business out of mutuals and place it with the F. I. A. at considerable saving.

Q. What do you mean by discounts?

A. If you take a policy covering burglary insurance or hold-up insurance covering many locations where we found separate policies, the underwriting rules provide for certain discounts when you combine them and have it all under one policy. You find in Workmen's Compensation Insurance the same condition.

Q. You mean if you have one policy covering the same risk that might be covered in a number of other policies, when you combine them into one you get a lower rate?

A. That is correct. I could take the Fidelity schedules as an illustration. You might have a rate for $100,000 and if you put $50,000 more you can have that $150,000 written [fol. 1173] cheaper than you can for $100,000. They are some of the inconsistent things in this business. I will give you another illustration of a small policy I ran into the other day, known as a check forgery policy, that covered the head office and various other offices in smaller amounts, the premium for which was $1,000. I could write that insurance blanket overall and save them $300 and give them better insurance coverage.

Q. What policy fees did you refer to when you said that you would eliminate some policy fees?

A. Under compensation policies you have certain expense in what they call expense in loss constant charges and the minimum premiums of those can be combined under one policy, in many instances, with a saving of fees. There are innumerable things in this business.

Q. Does that apply, what are you speaking of, to these rates that extend over a number of different States?

A. That is correct.

Q. And if you combine the risks of half a dozen States into one policy you would get a better rate than a separate policy written in each of those States?

A. That is correct. We can take our retrospective Workmen's Compensation rating today and a risk may not qualify in one State but by combining with other States it may qualify and may produce a far better result. Those are all permissible things in this business.

Q. Do they have any standard rules that they apply to that?

A. Yes, they are all standard and approved by the various States.

Q. That is what you call interstate rating, isn't it?

[fol.1174] A. What we call retrospective rating which permits interstate rating, permits the combining of those various policies into one rating plan.

Q. Take the case of the premium that would be necessary under your New York laws. If you put that New York policy in with a Virginia policy, would that permit the scaling down of the charge for that New York policy when you arrive at the total?

A. Certainly. The higher the premium goes the less the expense loading becomes.

Q. What do you mean by the expense loading?

A. Out of every premium dollar there is a certain expense loading for the company for overhead, inspection service and audit fees. If they are dealing with 25 different policies they have 25 different loadings in it, all the same loading. If they are dealing with just one policy and one form of rating those fees are reduced and the higher the premium becomes the less the overhead, so that if you have a $50,000 risk here in the State of New York and you have $50,000 in two other states, by combining those policies under one rating plan you produce a better result than if you had the three individual policies.

Q. Who decides on that?

A. The insured decides whether to take it or not.

Q. Who decides on the rate?

A. The rates are fixed. You use the file rates, but the company simply agrees to a certain minimum premium and a certain maximum premium and the assured's return being determined by his loss ratio.

Q. Then you have to take that up with the insurance companies as to what they are willing to allow in that particular case?

[fol. 1175] A. No, that is fixed.

Q. Fixed by whom?

A. Fixed either by the rating authorities or——

Q. Or who else?

A. No one else except those States that have no rating authorities where they may be combined under one contract.

Q. In a risk in States which have no rating authorities or no fixed rates, the company could drop that down to most anything they wanted to when it comes to arriving at the total rate?

A. There are a few of those States left.

Q. Do you know how many of such States there are?

A. I would have to get one of the manuals to tell you that. I know there are not many of them.

Q. Why is it you do more business with other companies than you do for the United States Fidelity & Guaranty Company that you are General Agent for?

A. Well, that is an old association. The founder of our firm, the late Mr. Joseph A. Flynn, was the executive head of the F. & D. here and when he decided to go into the brokerage business all the surety companies made a great play for him and the United States Fidelity & Guaranty Company was the company elected when he formed the firm originally and later it branched off into general insurance. For instance, I was brought up in the casualty business and as our business was built up we employed experts in the various lines of insurance to handle those various departments. So that we are insurance brokers. We happen to have an agency contract on surety business with the United States Fidelity & Guaranty Company. The only advantage of that contract is that we would receive more commission on surety [fol. 1176] business from the U. S. F. & G. than we would from other companies.

Q. That is the reason I am at a loss to understand why it is you don't put your business with them if you receive a greater rate of commission.

A. We find we have got to spread our business pretty well over the street.

Q. Why do you do that if you get more commission from the United States Fidelity & Guaranty Company?

A. You are asking a question again that is hard to answer because one company on a particular line will be better than another company. It just happens that our class of business can be more readily handled by other companies than the U. S. F. & G.

Q. But if these companies specialize in certain types of business, how is it that you get these tremendously blanket coverages that cover everything? Why don't you split them up into the companies that are specializing in the component parts of that business?

A. That is a question that I wouldn't care to answer.

Q. I don't see exactly how it is you can reconcile those two propositions?

A. I am afraid I would have to educate you in the brokerage business if I answered that question to your satisfaction.

Q. You say that sometimes a broker changes from one insurance company to another the business which he controls. Is the reason for that that you think the company you change to can give better service?

A. Sometimes, but you are dealing largely in personalities and sometimes they are apt to clash. This fellow may [fol. 1177] not like the claim man or he may be dissatisfied with some other feature. It may be some unreasonable thing. So, to make everybody happy, you just change it over to another company.

Q. Would a broker change to another company that didn't give as good service because he was getting less commission [fol. 1178] from the company that he was with?

A. No, the commissions are standard. Our commissions are set by the Acquisition Cost Conference and I can say, as far as our office is concerned, that we wouldn't take one cent of extra commission from anybody.

Q. I wasn't speaking of your office because you said you never did write any business unless you got the full commission, but I was speaking of the custom generally.

A. I think in New York, as far as I know, the commission situation is cleaner than it is in any part of the country. I am speaking about where there are brokers.

Q. You don't think then that a New York broker would change his client into a company that he thought gave less desirable protection or less desirable service on account of the fact that he could get a greater commission from the company that he was changing to?

A. I can't answer that except I could say that I am a member of the New York Brokers Association and that we have never had a member of our Association cited for a violation of the Commission Rule. What other brokers do, I don't know.

Q. What is your opinion about it? You are pretty well familiar with this business.

A. I think that the reputable brokers, those that have established reputations, are not interested in those practices at all. We are not out to violate any laws. We wouldn't violate them knowingly.

Q. Would that be in violation of the law?

A. That is a violation of the New York law. The insurance department has set up machinery which is functioning [fol. 1179] today for violations of that situation.

Q. Then if a broker did transfer it to another company because he could get a better brokerage commission from the new company, do you think that would be in violation of the New York law?

A. I think it would be very unethical.

Q. I was trying to get your understanding of the law, whether that would be in violation of the law, or not?

A. It is not a violation of law here except as to fire insurance, but the companies would be in violation of the agreement under this Acquisition Cost Conference Rules which are filed with the Insurance Department and they are expected to live up to them. So the only agreement they might make to pay a higher rate of commission would be at least a violation of the agreement they have entered into under the jurisdiction of the Insurance Department. The broker wouldn't be in violation except as to fire insurance and he can be cited by the Insurance Department which would have a hearing and the penalty is taking, for a certain period, a lower rate than the standard commission.

Q. How would the Insurance Department ever find out he had done it?

A. The Insurance Department of the State of New York has the right to examine any of the companies or any of the insurance brokers. They can send a man into our office whenever they see fit to examine our books.

Q. You say that you have some clients who carry their insurance in mutual companies and pay you part of the dividends that they get for servicing the risk. How many of those would you say you had?

A. Not more than three. Most of them are mutual contracts that were in existence when we took the other insurance over and we just carried on for a fee for that particu-

[fol. 1180] lar end of the business they might have had in the mutuals.

Q. Is it customary for brokers in New York to solicit business on that basis from the prospective assureds?

A. No, it is sort of forced on them.

Q. You say that you never place your clients in a company that is not admitted to the State where the risk is. Why is that?

A. Well, we deal principally with companies that are admitted to all States. We don't deal with small insurance companies. We deal with companies like the Insurance Company of North America, the Home Insurance Company, Continental group and others. They are entered in all States. The same is true of casualty companies. We don't want insurance companies that are only entered in a few States. We want complete service wherever we may need it. The larger casualty companies are admitted to all States.

Q. You say that you have found it expedient in some cases to secure the services of local agents and that these local agents were able to render some political assistance in some cases. Are they the only cases that you have ever associated any local agents with you in?

A. No, I have two or three lines that I have selected a local agent to get local service.

Q. Why did you want the local service?

A. There were certain details that I thought could be better handled on the ground than we could handle here in New York because the man handling our client's insurance was located a considerable distance from New York. I went down in a certain town in Kentucky to make a survey the other day to see if I could find some local agents to give [fol. 1181] me some service that I required and found no agent down there qualified to give it to me.

Q. What kind of service did you want in that case?

A. I wanted service on a big bus line and I found nobody in the town who knew anything about that type of insurance.

Q. They probably didn't have any insurance of that kind there, did they?

A. No, the insurance on those bus lines is controlled in the large centers and there are very few companies that write the business.

Q. Local agents haven't had any experience with them?

A. They didn't know what it was all about.

Q. What types of service have there been that you have required local help on?

A. Particularly on fire insurance to go out and survey properties for us and particularly where there is constant change going on and they can be sort of watch-dogs and we would not have to be constantly on the ground.

Q. Suppose you have a bus risk down in Virginia, what sort of service would you want down there?

A. Down in Virginia you happen to have a man who knows all about the bus business and has an insurance company handling that class of business.

Q. What type of service would you want him to render if it had been in Virginia, for instance?

A. Particularly safety work. The business is pretty well concentrated in this country on that type of business. It is very difficult to go into some of these towns and find a local agent who knows much about the insurance business, with due respect to Mr. Bennett. Many of them are real estate dealers who know very little about the fire insurance. They [fol. 1182] may know something about automobile insurance but to get an office that knows all the various lines of insurance, you can only find those fellows in the larger centers.

Q. What is it a man wouldn't know about the bus insurance, for instance? You say they wouldn't know the safety work? What else is it that you want from a local agent?

A. There are many things he could do, particularly with their filings and bond requirements. There are many things he wouldn't know how to do and we would probably have to do ourselves. I would probably have to spend $1500 which would not have been necessary if I had found a local competent agent to handle it.

Q. What did you have to do? Did you send your own engineer down there?

A. I sent more than an engineer down there. I would have to send two or three of our executive staff down there.

Q. To hold safety meetings with the employees?

A. Do various things.

Q. Why is it that the insurance company can't hold safety meetings?

A. They don't happen to be in an insurance company, as far as primary insurance is concerned. They carry mostly excess insurance and carry their own primary insurance, so no insurance company is interested in the servicing of the line.

Q. What types of service have you sought where you actually have your local agents? You said you have told them what you wanted them to do. What did you want them to do?

A. Well, there may be at times at various points that we would like a local agent to serve us in connection with local [fol. 1183] rating boards, to advance what ideas we might have to those boards and carry through for us, and when we do that we make an arrangement for the division of the commission.

Q. There are cases, then, where it is to the advantage of the assured to have the combined service of the New York broker and the local resident agent, are there not?

A. That is where the agent isn't thrust upon us and the broker has a right to go out and choose what agent he wants to do business with but if it is any agent I can't say that we can use him.

Q. Why do you say that? There is nothing in the law involved in this case that prevents a broker from choosing his own agent?

A. Yes, there would be. I might designate, as an illustration, the Travelers Insurance Company to handle a risk for me at a given point and at that point the Travelers agent may not be the best qualified agent to handle my problems locally. He may represent some other company.

Q. But the Travelers has quite a number of very excellent agents?

A. I am just using the Travelers as an illustration. I might pick another company that wouldn't have such a representation as the Travelers.

Q. You wouldn't have to pick that company, would you?

A. I might, yes.

Q. Couldn't you pick a company that had a local agent you might want to associate with you?

A. No, the company that might have the best agent might not write the class of business that I am interested in.

Q. Then your client would be deprived of the benefit of any local service at all? Isn't that true?

A. No, he would not. If I thought he needed a local agent's service I would go out and employ some other agent, irrespective of whether he represented the company or not, [fol. 1184] because all I expect from that agent when I employ him is to be my eyes and report to me certain things that I want him to watch for me.

Q. You say you frequently go to these clients of yours and have to get some business secrets in order to properly handle their insurance business?

A. Counsel used the word "secrets". I don't call them secrets, but if we are expected to furnish our clients certain bonds, which are nothing more nor less than financial guaranties, we and the bonding companies or surety companies must know intimately every detail of their financial structure because that is the basis on which the bond is underwritten.

Q. That is a Fidelity bond?

A. No. I am not talking about Fidelity bonds. Fidelity bonds are insurance. I am talking about financial guaranties, bonds that guarantee the faithful performance, which is just like signing a note.

Q. The companies require that before they will go on the bond?

A. That is correct.

Q. Is there any other type of so-called business secrets that you would require?

A. Yes, there are some types of risks that involve secret formulas.

Q. Formulas?

A. Yes, cosmetics, pharmaceutical goods and many things that you insure against that the company must know what it is all about and they don't care to entrust that information to everybody.

Q. They have to entrust it to the company, don't they?

A. That is correct.

[fol. 1185] Q. So that you haven't got any secret information that the insurance company doesn't have?

A. No, I have never said so.

Q. I just didn't understand exactly.

A. I thought that is what counsel was leading up to, the fact that there was certain confidential information furnished that wasn't broadcast. That is true, but they have to furnish it anyway in order to fulfill what they have set out to do.

Q. There is no information that you would have to get from the assured that the insurance company itself wouldn't also get?

A. That is correct.

Redirect examination.

By Mr. Christian:-

Q. In order to insure one of these coverages for a concern like the DuPont Company that makes cellophane or rayon, you would have to have an understanding of the processes of fabrication in order to know the coverages, wouldn't you?

A. Not necessarily.

[fol. 1186] Q. What about in the Fidelity business? Do you ever want to know what salary they pay particular individuals?

A. Yes. That comes up many times in fidelity insurance.

Q. On excess line coverage or excess insurance, is it important for the insurance company to be admitted to the State of coverage?

A. I don't think it is important, no.

Q. Regarding the thing that you said would be unethical, as I understood it, for a broker to take business to another company to get a higher commission, were you talking about a higher commission than the Acquisition Cost Conference Rules permit?

A. Correct.

Q. Do you think it would be unethical, if I were an insurance company and you bring me a risk and I say I will take it but I won't pay but half of the producer's commission, for you to say, "I will take it to somebody else who will pay me the full Acquisition Cost Conference commission?"

A. No, I wouldn't hesitate a moment to do it provided I wasn't jeopardizing my client.

Q. So the unethical thing you were talking about is where you are going to take it to somebody who is going to secretly give you more than he has agreed to pay producers?

A. That is correct.

[fol. 1187] Q. About an underwriter when he views a risk, suppose I am the insurance manager of the General Motors Company and you are making a deal with me to take over all my casualty line, and you have in that public liability, Workmen's Compensation, plate glass, burglary, and every kind of insurance, and you go to one of these insurance companies and offer them the hold-up insurance and maybe the automobile risk and you say, "I have got

these other lines with some other insurance company," does the underwriter for that insurance company that you offer one class of that business that you select out of the whole thing approach the underwriting problem there with as much favor or the same favor or greater favor than he would if you offered him all the different lines? In other words, would he fear selection against him or wouldn't he?

A. He would prefer to have the entire line.

Q. Would he be inclined to think there was some reason why you were picking out one line and giving it to him that maybe was a reason that did not augur very well for his future prospects?

A. We just don't believe in spreading business on any one line. We believe in concentration.

Q. So you would pick out one company ordinarily, even though you had several different kinds of risks, and give it to the particular company whom you thought, considering everything, was best able to do the job for the assured in all of those lines?

A. That is right.

[fol. 1188] Re-cross examination.

By Mr. Staples:

Q. You say that you think that a broker would be justified in transferring his business from one insurance company to another,—that is a particular risk—if the company failed to pay the entire producer's commission; is that right?

A. That is correct. We take the position here in the City of New York today that we can't accept any lower commissions and exist.

Q. Suppose all of the companies who are admitted to a State are required to pay half of the producer's commission to a local agent in that State, that only leaves half of the producer's commission to go to the broker unless the company is willing to pay the broker also the overriding commission which would go to a General Agent; isn't that true?

A. If that were followed out we would go out of business. We would quit. The partners wouldn't receive five cents out of our business.

Q. But under those circumstances you wouldn't have any place to transfer that risk to, would you, under the ethical

rules which you have of transferring it from one company to another where all of them are operating under the same law and have to comply with it?

A. We just wouldn't be in business. We would go out of business. We can't exist on that. We get thirteen per cent as our average commission and we run an overhead of at least eight per cent. How could we possibly exist?

Q. What is your average commission in the casualty line?

A. I am talking about overall.

[fol. 1189] Q. Do you know what your average commission is in the casualty line?

A. Workmen's Compensation insurance runs from eight and one-half per cent to ten per cent. Liability insurance runs from fifteen to seventeen and one-half per cent for a broker.

Q. Those are standard broker's commissions?

A. That is correct.

C. K. VANDERFEEN, a witness called on behalf of the plaintiffs in rebuttal and having been first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you please state your name and occupation?

A. C. K. Vanderfeen, Statistician, National Bureau of Casualty and Surety Underwriters.

Q. Will you state the location of your office?

A. 60 John Street, New York City.

Q. Please say whether or not it is a fact that the Bureau keeps the accounts of the Acquisition Cost Conference and of the Association of Casualty and Surety Executives?

A. The Bureau has supervision over the keeping of the accounts of both the named organizations.

Q. Does the Bureau see to the distribution or allocation of expenses among the members of the other organizations?

A. The Bureau does as respects both of those named organizations.

Q. Please say whether the Acquisition Cost Conference is a division or other subordinate of the Bureau?

[fol. 1190] A. It is not. It is a separate and distinct organization.

Q. And that is so of the Association?

A. That is so.

Q. Please state what companies are not in the Conference but are in the Bureau?

A. There are no companies that are in the Conference that are not in the Bureau. All Bureau members belong to the Conference.

Q. Please say what companies are in the Conference who are not in the Association?

A. The following companies are members of the Conference and not members of the Association: American Fidelity & Casualty Company, Guarantee Company of North America, Keystone Automobile Club, St. Paul-Mercury Indemnity Company.

Q. Have you made an examination to see what the aggregate casualty and surety premiums in Virginia of those four companies is?

A. I have.

Q. Will you state the amount?

A. The total Virginia premiums of those four companies amounted to $128,018.

Q. In what year?

A. In the calendar year 1937.

Q. Please say as to each line of insurance the largest amount of premiums in that line of any of those four companies?

A. Automobile Liability	$41,494
Liability, other than automobile	4,492
Workmen's Compensation	8,676

[fol. 1191]

Fidelity	4,394
Surety	1,820
Plate Glass	2,401
Burglary	1,470
Automobile Property Damage	11,097
Automobile Collision	545

Those are the major lines.

Q. Will you say what companies which are in the Association are not in the Bureau?

A. The following companies are members of the Association and not members of the National Bureau: American Credit Indemnity, Central Surety & Insurance Company, American Automobile, American Employers, Associated Indemnity, Car and General, Commercial Casualty, Continental Casualty, Employers Liability, General Accident, Fire

and Life, Home Indemnity, Indemnity Insurance Company of North America, Metropolitan Casualty, National Casualty, Seaboard Surety, Standard Surety and Casualty, United States Guarantee.

Q. Will you please state the total of premiums in casualty and surety lines of those companies in Virginia in the year 1937?

A. Those premiums amount to $1,356,389.

Q. Will you please state the premiums in each line of that one of those companies with the largest premiums in that line?

A. Accident	$45,739
Health	48,958
Automobile Liability	115,669

[fol. 1192]

Liability, other than automobile	$46,443
Workmen's Compensation	144,813
Fidelity	14,579
Surety	25,716
Plate Glass	7,154
Burglary	11,591
Boiler and Machinery	4,242
Automobile Property Damage	27,425
Automobile Collision	1,873

Q. Please state the names of the companies which are in the Association and not in the Conference?

A. American Credit Indemnity and Central Surety and Insurance Company.

Q. Will you please state the total Virginia premiums in 1937 of those companies?

A. $24,733.

Q. Will you please state the premiums in each line of one of those companies with the largest premiums in those lines?

A. Accident	$697
Automobile Liability	3,535
Fidelity	339
Surety	986
Plate Glass	4,259
Burglary	279

Q. Please state the name of reputable stock companies admitted to Virginia and not in the Conference, Association or Bureau, if you know those names?

[fol. 1193] A. The American Indemnity Company, the American Motorists, the American Policyholders, the Bituminous Casualty, Massachusetts Protective, Ohio Casualty, Penn Indemnity, Virginia Health and Accident and Virginia Surety.

Q. Will you please state the 1937 country-wide premiums of that group of companies and the Virginia premiums of that group of companies in the casualty and surety lines?

A. The total countrywide premium writings of the above named group of companies amount to $28,933,013. The Virginia premium writings of that same group of companies amount to $563,157.

Q. Will you now state the amount of premiums in each line of the one in that group of companies having the highest amount of Virginia premiums in each line?

A. The highest amount of Virginia writings for any one of the named companies are as follows:

Accident	$3,940
Accident and Health combined	171,641
Automobile Liability	82,538
Liability other than automobile	2,549
Workmen's Compensation	190,353
Fidelity	2,123
Surety	19,959
Plate Glass	3,108
Burglary	355
Automobile Property Damage	20,651
Automobile Collision	3,426

[fol. 1194] Q. In the absence of the Court having access to perhaps all of these figures, due in part to the Virginia Insurance Department not having made public the 1937 Virginia figures, please state on what reference books you base your statement?

A. All of the figures which I have testified to have been taken from exhibits published by the Spectator Company and furnished to their subscribers and which, in turn, are stated to have been abstracted from reports filed by each individual company with the Virginia Insurance Department.

Q. And the Court could compute this information itself by examining those Spectator books, couldn't it?

A. It could and they are stated to be taken from, and I have not found them at any time at variance with the re-

ports filed with each individual state insurance department.

Q. Those books that you used are public books in circulation throughout the business, aren't they?

A. They are.

Q. Refer please to stock companies not admitted to Virginia or, at least without Virginia coverage, and which are reputable companies and state their names and their premium data for 1937 in the same way you have stated the names and premium data for the other companies?

A. The following are, to the best of my knowledge and belief, reputable companies which are apparently not entered in Virginia: Citizens Casualty, Manufacturers Casualty, Preferred Accident, Yorkshire Indemnity, Commercial Standard, Connecticut Indemnity, Merchants Indemnity.

Q. What are the total premium writings of the Yorkshire Indemnity?

[fol. 1195] A. Country-wide premium writings are $870,892.

Q. The Preferred Accident?

A. $4,396,971.

Q. Manufacturers Casualty?

A. $3,324,241.

Q. Commercial Standard?

A. $2,900,971.

Q. Will you give the figure of the largest writing in each line of that one of that group of companies which has the largest writings in that line.

A.

Accident	$554,696
Health	49,219
Automobile Liability	2,489,885
Liability other than automobile	213,467
Workmen's Compensation	680,711
Fidelity	117,182
Surety	146,217
Plate Glass	57,603
Burglary	236,567
Automobile Property Damage	667,260
Automobile Collision	116,923

Q. Am I correct in my understanding that you have not attempted to speak at all about mutual insurance companies or reciprocal exchanges?

A. All of my testimony has related entirely to stock carriers.

Cross-examination.

By Mr. Staples:

[fol. 1196] Q. What is the National Bureau of Casualty and Surety Underwriters?

A. The National Bureau is a voluntary association of stock casualty and surety companies which functions as a rate-making and rate-administrating organization for its members insofar as it has powers.

Q. And what about the Association of Casualty and Surety Executives?

A. The Association of Casualty and Surety Executives, to the best of my knowledge, is an entirely separate voluntary organization of stock casualty and surety companies for the purposes of conservation, accident prevention, and the handling of current legislative problems and general policy problems of its members, and, to the best of my knowledge, has nothing to do with rates or rate-making.

Q. The Casualty and Surety Conference does what?

A. To the best of my knowledge, the Casualty and Surety Conference deals entirely with matters in control of acquisition cost.

Q. And the only one of these that fixes the ultimate rates, insofar as these rates are fixed, is what you have referred to as the National Bureau?

A. The National Bureau, to my knowledge, fixes no rates except recommends rates which are obligatory on its members unless there are state or other supervisory authorities who have the power to make or recommend rates for the various lines of business under its jurisdiction, which do not include all casualty lines and do not include any surety lines or workmen's compensation.

Q. The companies that are not in that have their rates fixed in what way or are they free-lances in that matter?

A. The companies who are not members of the National Bureau are, to the best of my knowledge, at liberty to write at any rates they cho-se, subject to the approval of any authorized state or federal authorities.

[fol. 1197] Q. Do you know whether they usually observe the rates or are they in the cut-rate business or how are they looked on in the business?

A. Some of them are cut-rate and some observe the rates. They adopt their policies as they see fit, subject to the state supervisory laws.

Q. And they pay any acquisition cost they see fit, I suppose?

A. That I do not know but I assume they do. I don't know anything about that.

Q. Are there any of the companies in this suit that are not members of the National Bureau?

A. Yes.

Q. Name them?

A. Accident & Casualty, American Automobile, Car & General, Central Surety, Continental Casualty Company, General Accident, Indemnity Insurance Company of North America, National Casualty, Seaboard Surety, Standard Surety & Casualty, United States Guarantee.

Q. Which of them are not members of the Association of Casualty and Surety Executives?

A. All of them are members of the Association.

Q. Which of them are not members of the Casualty and Surety Acquisition Cost Conference?

A. Central Surety is apparently not a member of the Acquisition Cost Conference.

Q. Does the Central Surety Company do business in New York State?

A. I do not believe it does.

Q. How many of those other companies that do not do business in Virginia do business in New York State?

[fol. 1198] A. I don't know what companies you are referring to.

Q. Didn't you read off a list of companies?

A. Sometime ago, you mean?

Q. Yes.

A. The companies that do not do business in Virginia?

Q. And do business in New York?

A. This is the list you refer to: Citizens Casualty does business in New York and does not do business in Virginia, the Manufacturers Casualty, Preferred Accident, Yorkshire Indemnity, Merchants Indemnity, Commercial Standard—and it does not do business in either New York or Virginia. I do not believe the Continental Indemnity does business in New York of those other companies that I have named.

Q. A New York broker couldn't very well write business here in a company that is not doing business in this state, could he?

A. I don't know. I don't think so.

Q. Are there any New York laws that control the competi-

tive rates or commissions that these companies that are not members of the Bureau charge?

A. New York regulations do exist respecting rates. That I know.

Q. Do they exist with respect to brokers' commissions?

A. That I do not know as I am connected only with a rate-making organization.

Q. What are your duties principally?

A. The regular duties of an actu-rial statistician which comprise the collection of casualty statistics on a uniform basis from the member companies of the National Bureau in such manner that they can be consolidated.

Q. In other words, you get the experience and loss ratio and information of that type upon which underwriting rates are based?

[fol. 1199] A. Well, I obtain such data as are deemed essential by the rating committees of the National Bureau to review and recommend adjustments of rates for the lines of business under the National Bureau's jurisdiction.

Q. What are the principal items of the data that you compile?

A. For the various lines of business under the jurisdiction of the National Bureau—exposures, losses, number of claims, excess portion of excess losses.

Q. What do you mean by data on exposures?

A. Exposures are the units subject to hazard for each line of business. For example, in automobile one car insured for one year constitutes one unit of exposure.

Q. Do you know the component elements that go into the different rates in the casualty lines?

A. I do.

Q. What are they in automobile liability insurance?

A. Two component elements are loss and expense.

Q. And do you know how they are subdivided or how the expense is subdivided?

A. I do not.

Q. Do you add anything for profit?

A. There is a loading of profit in certain rates, yes.

Q. How would the company expect to make any money if they didn't allow for profit?

A. From their experience that they would develop. I imagine that it is up to the company or companies or any organization to make rates. They would necessarily allow a factor for profit but in many instances the rates are not

[fol. 1200] made by any company or organization but are approved or, in some instances, made by state authority.

Q. What lines of coverage are there that they try to establish uniform rates in?

A. I should say all lines but various parties only are attempting to get uniform rates. You said "they". I don't know who you mean?

Q. I meant companies who are members of your Bureau. Is it the purpose of the Bureau to try to establish uniform rates in all of these lines of coverage in the casualty and surety companies?

A. That I do not know. As between Bureau members, yes, for the Bureau members themselves.

Q. Does it come within your knowledge as to the effect of some of these companies not having any rates which they agree to live up to, what effect that has on the business of the companies that do live up to the rates?

A. I should say the effect is detrimental.

Q. Detrimental to the company that cuts the rates or the one that doesn't cut them?

A. I think it is detrimental to every party concerned.

Q. Detrimental to both?

A. Detrimental to both.

Q. As a result of what you have just stated, it is necessarily true that the companies which are members of this Bureau are practically compelled to adopt the rate about as cheap as they can profitably operate on, isn't it? If they don't do that the companies that are not members of the Bureau can very easily undersell them at a profit to themselves? Is that true or not?

[fol. 1201] A. I should say that is true.

Gilbert L. Kerr, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Kerr, will you state your name and present occupation?

A. Gilbert L. Kerr, Superintendent of the Casualty Department of the Fidelity & Casualty Company of New York.

Q. Where is your office?

A. 80 Maiden Lane, New York.

Q. Will you please state what facilities, if any, other than the services of producing brokers and agents or local countersigning agents, casualty insurance companies have before or after covering fleet or single car automobile liability risks for gaining information as to the habits, record and standing of assureds, and employees of single car assureds?

A. There are reporting companies which furnish us information as to the habits, experience and general information regarding both individual and fleet risks. The companies also have engineering or inspection departments, payroll audit departments, and salaried representatives, sometimes called special agents, or field men. I don't know how much detail you wish me to go into. The reporting companies furnish us information concerning the driving records and driving ability of automobile risks, their traffic and accident records, if any, and their general suggestion as to their standing in the community. The engineering or inspection departments inspect and report on the physical aspects of the fleet risks and other types of insurable risks, compensation and liability.

[fol. 1202] Q. Do you make use of these outside facilities for inspections other than those in connection with automobile liability risks?

A. Yes, sir.

Q. What are the names of the leading companies with national organizations that do this work?

A. Retail Credit Company and Hooper-Holmes Bureau.

Q. Are you able to say whether they have personnel throughout the United States in the various states doing this inspection work?

A. Yes, sir.

Q. Will you please tell me whether these reports are sought prior to the companies going on the risk or periodically thereafter or in both ways?

A. In both ways.

Cross-examination.

By Mr. Staples:

Q. Why does the company get these reports?

A. In order to determine, as far as is possible, the acceptability of a given risk.

Q. Do they get these reports where the risk is written by a local agent, inside of the state as well as outside, to sort of check up on the agent?

A. They get the reports on risks written either inside or outside the state.

Q. In other words, whether the risk is written by a local man or whether it is written by a non-resident broker wouldn't affect the giving of the report?

[fol. 1203] A. No, sir, the report would be secured in either case.

Q. It is an independent check-up that the companies have from an impartial source, or supposedly so, to check not only against the local agent, if he recommends a risk, but also against the broker or any other person who may recommend a risk; is that true?

A. I don't like to comment on your statement, but it is an independent check-up, yes, through a source that we consider impartial and competent. The point that I am commenting on is your statement regarding the recommendation of the local agent. I don't know just exactly what you mean by that.

Q. Suppose a local agent recommends the driver of an automobile as a good safe man with a good record, you would not accept that as final but would also get this Retail Credit Company's report to see whether or not the agent knew what he was talking about or whether he has honestly disclosed what he thought about the situation, would you not?

A. We would get the report to check the acceptability of the risk to see if it was an acceptable risk to us.

Q. You don't know anything about how they get their information?

A. I know that they have sources of information. Perhaps I should say that they inform us that they have sources of information. They tell us that in certain points they have salaried investigators and other places they have what they term correspondents.

Q. You spoke also of availing yourself of the services of engineering and field men. Do you mean men employed by your company regularly or independent, outside engineering and field men?

A. Employed by our company regularly.

Q. You don't rely then on your engineering and inspec-
[fol. 1204] tion men or your claim men to give you informa-

tion of the type that you resort to the Retail Credit Company and the Hooper-Holmes Bureau for?

A. No, sir.

Q. What kind of reports do you desire from them after a risk has been accepted? Is it to determine whether you shall continue the risk?

A. Yes, sir, that is correct.

Q. I notice your accident and health report seems to be restricted to inquiry about one particular man. Is it not true that practically all accident and health business originates in the state in which the assured generally lives or resides and is not handled through non-resident brokers?

A. I can't say as to that. I don't know.

Q. What are your duties as Superintendent of the Casualty Department?

A. Supervision of the underwriting of all casualty lines except accident and health.

Q. What about burglary? Would you say that that is true of resident burglary insurance, that that originates in the home state of the assured as a general rule?

A. As a general rule, yes.

Q. Would you say that it was a common occurrence to have a burglary policy, where the assured has only one home, originate outside of the state of his residence?

A. I think it would not be common.

Q. What would you say on that question as to individual automobile policies?

A. I would say it was not uncommon. There are probably more instances of individual automobiles than there would [fol. 1205] be of residence burglary from my observation.

Q. Wouldn't that be almost confined to cases where a person has a home in another state and probably has an automobile down there as well as where he resides?

A. Possibly.

Q. What percentages of individual automobile policies would you say were handled through non-resident brokers?

A. I couldn't give an estimate. I have no idea.

Q. Wouldn't it be a very small per cent of the total?

A. I would think so, yes.

HALE ANDERSON, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you please state your position and where your office is situated, Mr. Anderson?

A. I am one of the Vice-Presidents of the Fidelity & Casualty Company and my office is at 80 Maiden Lane, New York City.

Q. In your position with what matters do you particularly have to do, that is to say, production or underwriting or legal matters or what?

A. I am in charge of the Company's underwriting.

Q. Please say what facilities, other than the services of producing brokers and agents or local countersigning agents, do fidelity and surety companies have for gaining information, either before or after covering fidelity risks, as to the habits, record and standing of bonded employees of their assureds?

[fol. 1206] A. In the first place, we insist upon receiving from every person to be bonded an application form giving very complete information as to that individual's history, present place in society, and particularly his former employments. Accompanying the application is a form which is filled out and signed by the employer, what we call the Employer's Statement, in which the employer gives details of the duties of the person to be bonded, the details as to how his operations are checked and supervised by the employer.

As I stated, the application calls for a wealth of information about the person to be bonded. Among other things, he gives the names of a number of references, people who know him and who he thinks will be willing to give information regarding his reputation and standing in the community. We write to each of those references, asking them many questions about the applicant.

As I have stated, the application must give a very complete list of the employee's past employments over a time of, in some cases, five years and, in most cases, ten years and he must state those former employments with the dates of employment, the name of the employer, the nature of the employment, the name of the individual under whom he

worked in the employer's job, and we write to each of those former employers, sending a questionnaire stating that the applicant says that he worked there at such and such a time under Mr. So and so and asking the former employer a great many questions about the applicant's record while with the former employer.

Occasionally we learn from a reference, or from a former employer, or otherwise, of an employment that the applicant has not himself listed. We hear of it, we will say, by chance. [fol. 1207] We write this form to that disclosed former employment that wasn't listed by the applicant.

We write this form to schools which the applicant attended where the applicant is so young that the ten-year period would carry him back into the school age.

As in the case of former employers, whom we learn of by chance, not listed in the applicant's application, we learn sometimes, not directly, of chance acquaintances. We learn that the applicant is known to Mr. Jones or Mr. Smith, although those gentlemen haven't been named by either the applicant or the former employer, and we have this form to make inquiry regarding the applicant from what I term a chance acquaintance or chance, so far as we are concerned. We just stumble upon the fact that someone else may know the applicant.

It is our practice annually to ask the employer to fill out this form, telling us how the applicant has behaved during the past year of his employment, have his accounts been examined and found correct, so far as the employer is able to determine, has the applicant been giving satisfactory service, are his personal habits, so far as the employer is able to determine, proper ones. In other words, this is an annual check-up on the employee as he continues in the employment.

All of that leads up to this consummation in the investigation. The references given by the applicant himself speak well of him perhaps. That is to be presumed, as he would hardly give many references who will be apt to speak ill of him, but it is surprising the number of cases in which even the reference given by the applicant himself will disclose information of a not altogether favorable nature or will give a clue to lines of inquiry that we can follow, but most important of all in the investigation is the complete verification of his history of past employment and we wouldn't [fol. 1208] bond the man unless we can verify and secure

favorable reports covering all of his time for the past five or perhaps ten years.

In addition to those forms of our own in that investigation, in the bonding department we also use the services that were referred to by Mr. Kerr, the special bond reports of the Retail Credit Company and of the Hooper-Holmes Bureau, they being familiar with our requirements and the nature of the information we need, and being quite expert in acquiring information of a fidelity nature.

Q. Having once gotten an inspection and report thereof, such as is covered by one of these forms, other than the employer's annual form, are you done with the matter or do you periodically, during the continuance of the renewal of the risk, procure these other re-reports, if I may use that word?

A. That depends upon the individual risk. If in our initial investigation we are not completely satisfied with all phases of the man's history, we do make periodic re-checks through the agencies described, in addition to the reports received from the employer. There are cases in which, everything being entirely satisfactory in the initial investigation, all of the reports from the employer annually being entirely satisfactory, we don't again order the Retail Credit or Hooper-Holmes reports.

Q. In your past experience leading to your occupying the office which you now do, have you had any quantity of contacts with producers and brokers and agents and with their assureds and their representatives?

A. Oh, yes, sir, I am constantly dealing with both assureds and with brokers and agents.

Q. Is it an ordinary part of your business to have to [fol. 1209] discuss things and negotiate things with both of those people and you see them together at times?

A. I see them both separately and together.

Q. I want you to say what would be, in your opinion, the reaction of a producer to a tender of services and recommendations or suggestions to his assured by local agents around the country in the localities of the coverage, whether he would welcome that or not welcome it, whether he would be thankful or unthankful, and so on?

A. The production of insurance—by production I mean the acquisition of insurance by an agent—is an extremely competitive business. Consequently in my experience I have found insurance agents very, very jealous of the risks that they control and of everything about them and

they are all the time greatly concerned for fear a competing agent will acquire any information about their risks which might enable the competing agent to take that risk away. Consequently, in my experience, I have found that an agent controlling the piece of business will go to almost any length to prevent another insurance agent from acquiring any information about or contact with his assured.

Q. Can you say whether the companies, from your experience, feel that for the protection of their interests that they may and properly should deal with their assureds through the producer of the business or whether they may efficiently, and with propriety, deal with their assureds through agents not the producers of the business but who, we will say, are countersigners or agents who, in addition to countersigning, put themselves forward under some state law but not at the desire of the producer, to perform other services in connection with the risk?

A. In my experience any company would consider it [fol. 1210] suicidal to give other than the producing agent any information about a risk or to deal in any way with an agent other than the producing agent in regard to a risk beyond that which is the minimum required by law under countersignature laws, or whatever they are. It is, to explain what I mean by the latter, necessary in some states that a policy be countersigned by an agent resident in that state. Of course, the company must comply with the law and place the policy at the disposal of some resident agent for countersignature purposes. It can't help going that far, but it would not for a moment voluntarily give other than the producing agent any additional information about the producing agent's business.

Q. Would you say that it would be beneficial to the loyalty of the producing agents of your company or destructive of their loyalty for the company to adopt another policy?

A. It would be utterly destructive. We would lose our producing agents if we permitted information about their business to get into the hands of other than the producer.

Q. In the absence of that feeling by the producers, you would feel it would be a good thing for you as a company to have these local countersigning agents around the country interest themselves in business produced by other agents and making suggestions to you or attempting to serve you with reference to it?

A. Before we get to whether or not we should like to

utilize such local agents' services, we would have to climb over an obstacle second to that of the producing agent and that would be the assured. The assured considers his business a highly confidential matter. He chooses the agent with whom he is willing to entrust those confidential matters. [fol. 1211] The assured would most certainly object to information that he had given in confidence to his chosen agent and his chosen company getting into the hands of someone that he had not selected and didn't know. If there were no objection whatever upon the part of the producing agent to having others come into the picture and if there were no objection whatever on the part of the assured (those are two ifs that create a purely academic situation because they are as real as anything there is in life) it is possible that in some few cases and in the case of some few exceptional local agents, they might be of service to the company. I can't answer accurately as to that because it simply isn't a practice that has ever been in vogue and I can only speculate on the degree of value that such local services might be.

Q. I would like to have a picture of what there is about an assured's business that he might not want to put into the hands of a countersigning agent, and I wish you would take a casualty risk first and illustrate it and then take a surety risk and put on the record some idea of the kind of things that it would be pertinent to you, as an underwriter of a casualty risk, to know that an assured wouldn't want put into the hands of any countersigning agent who happened along?

A. Take in the casualty field a workmen's compensation risk. An intelligent understanding and underwriting of a workmen's compensation risk involves a complete knowledge of all of the assured's operations in all of their details, what men do, what tools they use, what materials they use, how they use those tools and materials, how the operations in the plant are divided, how work progresses from one step to another, what the pay rolls are in the plant, how those pay rolls are divided into various classes, industrial hygiene surveys of the plant for the dangers that may create [fol. 1212] what are termed occupational diseases, chemists' tests of materials used and engineering inspection of all of the functions of the plant. The pay roll auditors have the complete run of the books of the assured. That information is all necessary for a comprehensive understanding of the risk. It would be intolerable from the employer's point

of view to have any but his own choice of both agent and company having access to all of that information.

Q. Would you say that a concern with factory locations or project locations in several states would have to communicate data from the several locations to its underwriter or producer in order to enable him to intelligently determine upon the exposures and extents of exposures that the concern had and the coverages and extents of coverages which it should have and the best kind of contracts adapted to its needs?

A. In my experience it is infinitely more desirable from the assured's point of view and from the company's point of view to have information regarding scattered units of a single risk come through a single source because thereby the assured is saved from the annoyance and possible risk of dealing with many different personalities and the company is assured of getting information of uniform quality as to all of the units.

Q. Can you say whether it is true or not that the cost to the assured may legitimately be lessened by considering his operations at all of his multiple locations over what that cost would have been if he had gone around piecemeal and had the policies written separately in each location?

A. It is rather difficult to answer that question in a manner that would cover all cases and all circumstances. In a great many cases it would make no difference in the assured's ultimate premium as to whether he placed the risk [fol. 1213] in a number of separate units or whether he placed it all as one unit but there are other cases in which it would make a difference. For example, take the fidelity and surety field. A given large corporation may own numerous subsidiaries. If it insured each one of those separately, each subsidiary would take the rate applicable to the volume of business of that subsidiary, whereas if it insured the operations of the entire organization, the entire organization would get the benefit of the somewhat lower rate applicable to the larger amount of total insurance. Similarly, if automobiles are insured separately they may take individual car rates, whereas if insured as part of a fleet they would take the fleet discount.

Q. What are the things of a private nature that a contractor who is going to give a bond might be willing to tell the bonding company or to his chosen producer, and what

are some of those things that he might not want to tell to an agent in every county that he happened to be doing some work in?

A. A bonding company in writing a contract bond, is primarily interested in the adequacy of the contractor's price for the work. That is made up of various units of cost as to material. A contractor is very jealous of the prices he has been able to get for cement, steel, or whatever it is. He wouldn't tolerate for a moment information as to the prices he had been able to secure for those materials getting into hands other than of the ones he chose to handle the transaction.

Q. Is it necessary in cases like that, in order to do underwriting properly, that the underwriter should know the volume of work to be performed by the contractor and to have information as to the practicability of his doing that work, the price at which he has assumed to do it and the security [fol. 1214] he may have for the performance of his obligation? Is it necessary for the underwriter to know what suits are pending against the contractor for alleged past breaches of contracts and to have the contractor's full financial statement, and to not only have him say he has assets of so much and liabilities of so much but to know of what the assets consist and how collectible they are, and so on?

A. Every bit of that information is essential to properly underwriting a contract bond.

Q. If I were a local agent and were offering my assistance in my capacity as a local agent, both to the company and the producer in underwriting that bond, if I couldn't get any of that information would my services be substantial, in your opinion?

A. I can't imagine any way in which the local agent would be of any use whatever, either to the contractor or the company.

Cross-examination.

By Mr. Staples:

Q. Mr. Anderson, what are your principal duties with the Fidelity & Casualty Company?

A. I am in charge of underwriting. In that work I simply confer with and supervise the activities of the various underwriting divisions of the company. I constantly confer with and reach decisions with agents of the company from all over the country, both by personal calls and by

correspondence, and I am also frequently in conference with the company's assureds as to acceptability of business and the terms under which it will be accepted, as distinguished from the actual sales and claim payment activities of the company.

[fol. 1215] Q. Why do you get in touch with the local agents all over the country?

A. A great many of them come to New York and they invariably call upon me to discuss their problems when they do. I occasionally make trips around the country, in which case I call upon them to discuss their problems.

Q. What problems do they have that you discuss with them that come within the general scope of your duties?

A. Broadly speaking, what sort of business will the company accept and under what circumstances, and what sort of business will we not accept and why.

Q. Do you try to get information from the agents as to the general facts and underlying circumstances, attending a risk that you are considering underwriting?

A. All of our business is handled primarily by means of forms that are designed to bring out all needed information for underwriting and that information is supplemented and confirmed by various methods of investigation that we carry on, such as these reports of which I speak. To the extent that the agent is instrumental in having these forms completed, the agent is instrumental in giving us information about the risk. Furthermore, frequently the agent in submitting the risk to us gives us his personal opinion of the risk. I hope I have answered your question. I don't know that I understand precisely its scope.

Q. Isn't it frequently true that in going over these various forms you run into questions which would raise a doubt in your mind as to the desirability of the risk and you refer the matter to the agent to see if he can clear it up and give you additional information which will remove that doubt?

A. If an agent sends us in papers which are incomplete [fol. 1216] or which contain ambiguities or which leave us in doubt as to certain points, we do write to the agent who submits the business and ask for further information on the point in question.

Q. I had reference more to doubts which arose from these reports that you get from sources other than agents, such as the people you write to inquire about a man or his habits or his former employers or something of that kind. Would

you write to an agent to find out whether, in his opinion, if a bad report was given on a man, it was due to ill feeling or would you give him a chance to clear up the doubt that arose or to make further investigation into the facts?

A. I should say, generally speaking, we almost never do that, no. We clear up the point through collateral investigation. The average agent hasn't an intimate knowledge of the risk.

Q. He might know though whether or not a person that gave you information was friendly to the assured or whether he had any personal hostility or something of that kind, might he not?

A. We have much more effective ways of detecting prejudiced information.

Q. How do you do it?

A. We send our salaried representatives who are trained in such matters to interview the one who gave the unfavorable information.

Q. So if you thought the risk undesirable you would turn it down without giving the producing agent an opportunity to clear up your difficulties or your doubts, or whatever reason you might have for rejecting it?

A. Yes, we would.

[fol. 1217] Q. It doesn't strike me that is very fair to the agent. It does look like he ought to be given an opportunity to be heard in the matter before you reject his business.

A. We have been discussing, in the last few minutes, the investigation of an applicant for a bond. The local agent simply is not equipped to reach a sound decision on a point of that kind because it almost invariably involves an attempted concealment of a past employment that reflected discredit on the applicant. The agent, in the first place, is not skilled in uncovering such deception. He wouldn't have a Chinaman's chance of being useful in the matter and he probably would succeed in only befogging the issue.

Q. Might it not be true that instead of trying to conceal a discreditable performance, it might be that he had had a very unpleasant personal relationship with his former employer and didn't care about having you get a report from him for that reason because he thought it would be bias-- or prejudiced?

A. I may say that in our fidelity underwriting we never decline an applicant because of an unfavorable report from a single source. We always, before making an unfavorable

decision in such a case, recognizing our great responsibility to the applicant, insist upon confirmation, direct or collateral, of the unfavorable information. We are very keenly alive to the fact that human nature is what it is and people do bear grudges and sometimes unjustly speak ill of a person.

Q. And you don't think that your agents are competent to find out about those things?

A. Broadly speaking, I am sure they are not. It takes one [fol. 1218] with long experience in handling such investigations to properly evaluate information.

Q. Who do these credit companies employ to do that?

A. I only know about their practices from the publicity they put out, the magazines and house organs they issue and whatnot. Those house organs show that they have many thousands of salaried employees all over the country engaged in nothing but making these investigations.

Q. So you would place confidence in somebody you didn't know who was making the report, rather than on your own agent?

A. I would phrase it somewhat differently. I place confidence in one who is trained in a given technical field above information given by one whose activities in life are wholly foreign to that field.

Q. Young lawyers are certainly not trained in that field and when I first started out practicing law I made many reports for the Retail Credit Company on matters of that kind. I suppose they probably still follow that practice, although I do not know.

A. That may be but you must remember that we don't ask these reporting agencies for conclusions. We ask them for facts. If they say, "We talked to Mr. Jones, the grocer, and he says, 'I have carried the account of Bill Smith for the past two years and I have to put a stick of dynamite under him every week in order to get the money out of him,' " that is a fact. That isn't a conclusion. We can draw the conclusions on that.

Q. Does your form call for a report from the grocer?

A. I am speaking of these report forms. The reporting agency may interview the corner grocer. If it does it tells us the result of the interview.

[fol. 1219] Q. I never saw anything like that on the forms I used to get. They were largely matters of opinion as to a

man's whiskey drinking habits or general reputation for honesty and things of that kind.

A. On these reports you will find a large space for remarks and sometimes running over on the back for the purpose of inserting factual information they acquired and from whom they acquired it.

Q. You don't know the man's name who investigates it?

A. I don't know, no.

Q. Or how reliable his report would be?

A. Other than experience over a long term of years that we have had with these reporting agencies.

Q. You don't think that the local resident agent would be able to interview the grocer and find out whether the man paid his bills?

A. In the first place he wouldn't do it because he wouldn't be bothered with it and, in the second place, he is not, as I say, a trained investigator; he is an insurance salesman.

Q. It wouldn't take a trained investigator to ask a grocer whether a man pays his bills?

A. It takes a trained investigator to do that work without raising a row, yes, because you have got to be very discreet and careful and circumspect and experienced in doing that work or you will have a tempest about your ears.

Q. Aren't these insurance agents usually pretty adroit and tactful sort of people? They have to be that way to get along in the insurance business, don't they?

A. They are very tactful and adroit in their business, [fol. 1220] which is selling insurance. I don't think that they are trained investigators—in my experience, of course, and subject, naturally, to exceptions.

Q. Have you ever had any agent in Virginia to make an unwelcomed tender of service to one of your assureds?

A. I don't recall any.

Q. Have you ever had any in any other states?

A. I wonder if I understand fully what you mean by an unwelcomed tender of assistance.

Q. Services?

A. We have frequently—I say frequently—occasions on which we hear of an agent, other than the agent who controls the business, approaching the assured, his object undoubtedly being to get acquainted with the assured and learn about the assured's business and ultimately to secure the assured's business.

Q. He is engaged in soliciting the business, isn't he?

A. I presume you would gather it together under that head, yes.

Q. And, of course, I suppose an insurance agent sometimes does ask questions when he is soliciting business that may not be very tactful and maybe the assured doesn't want to answer them. That is probably true, isn't it?

A. I have no doubt it is.

Q. But I think that is on an entirely different basis.

A. Perhaps I didn't understand your question.

Q. An agent who is presumably getting half of the commissions for the work and the contract has already been written and he is offering to be of service to the assured in any way that he can during the life of the contract, has [fol. 1221] no ax to grind by going there except to make himself useful and help the broker, we will say, who negotiated the contract.

A. In my experience all agents are very much alive to what I described at the beginning of your questions, to the fact that every agent is tremendously jealous of his business and won't tolerate any interference in it by another agent, and wishing to do as they are done by, I don't think that any but the producing agent is at all apt to approach the assured.

Q. That is because you think there would be a feeling on the part of the producing agent or broker in New York that the local Virginia agent would try to undermine him or take the business away from him, isn't it?

A. I think it is due to the fact that insurance agents generally recognize that they must not trespass on preserves that belong to others except by legitimate means and that it wouldn't be legitimate means to get acquainted with the assured of another agent by the instrumentality of offering to be of service.

Q. I say why is that so? Why is it that they don't like it? Why is it the New York broker doesn't want the Virginia agent to contact his assured?

A. I suppose for the same reason that if you were selling shoes you wouldn't like a rival salesman from some other shoe company calling on your customers. It seems evident to me why they don't like it.

Q. You think it is because he would regard the Virginia agent as a competitor of his; is that true?

A. I think every insurance agent is a potential competitor of every other.

Q. If the Virginia agent recognizes the broker's right to [fol. 1222] the business and is really trying to help the broker retain the business on his books and, if it is renewed, recognizes that the renewal is just as much for the benefit of the broker as it is for the agent, why should he object to that?

A. Why should the broker object to it?

Q. Yes.

A. Well, I think the broker's answer would be, "If I want assistance I will ask for it and I do not want you to give it until I tell you I want it."

Q. You are assuming he does object. Why should he object?

A. Well, I don't know that I am competent to answer what goes through a broker's mind. I am not a broker and I am not an agent. From my conversations with them, I believe they take the broad general stand that the less any other agent has to do with their business the less chance there is of some other agent taking the business away from them.

Q. But they do associate local agents with them very frequently, don't they?

A. I shouldn't say frequently done, no. I have heard of cases where a broker enlisted the services of a local agent where he feels it necessary to do so in order to handle the business but I shouldn't say it is frequently done.

Q. No, I asked you whether or not, in your opinion, the brokers up here were afraid to trust that firm or thought that they would undermine them?

A. I say that in my experience and from my conversations with agents and brokers I gathered the impression that they wish to have other agents and brokers have as little as possible to do with their risks.

[fol. 1223] Q. Have you found that brokers were unwilling for their associates in other states where they did associate local agents with them to be provided with such information as would help them service the risks?

A. If a broker handling a piece of business chooses to utilize the services of a local agent for a given purpose, he, of course, furnishes that local agent with information that will enable the local agent to perform the service that the broker is asking for.

Q. It would seem quite obvious that the broker can't expect the local agent to render the service customarily rendered by a local agent without that agent having the neces-

sary information on which to base his actions and in those cases where there have been a voluntary association and the broker felt that the local agent would respect his rights, you haven't found any unwillingness to supply the local agent with that information which is necessary, have you?

A. In my experience the broker utilizes the services of the resident agent only when and to that degree that it is necessary and he supplies the local agent with only that degree of information that is necessary for the performance of the necessary services, so that I hardly think the term "willingness" is proper. It is necessary. Willingness suggests complete acquiescence, voluntary action. Necessity suggests "I have to do it."

Q. You don't think that these New York brokers would like the idea of being compelled to associate a local agent with them, do you?

A. In my opinion they would not like it, no, sir.

Q. To get back to the original question, what agent have you ever known of to persist in securing information from an assured against his will or an assured that did not want [fol. 1224] to give it where an agent had already written the business or where he was associated with a broker who had written the business?

A. If a broker who is chosen by the assured to handle the assured's business enlists the aid of a local agent, he does so only with the knowledge and consent and acquiescence of the assured. He wouldn't send a stranger into the assured to ask any questions because the assured would most certainly refuse to answer the questions and not recognize the man had any right to ask them. Consequently, if, as I say, the broker enlists the aid of a local agent, that is done with the consent and acquiescence of the assured and if that assisting local agent goes to the assured's local plant and asks some questions, the assured undoubtedly would give the information to that collaborator of the broker as he would to the broker himself. So in such case I can't think of any instance where such information has been denied.

Q. You never have known any case of that kind, have you?

A. Where a broker has enlisted the aid of a local agent?

Q. And the local agent has made himself obnoxious to the assured?

A. No, I don't think of any case. It doesn't mean there aren't any. I just don't think of any.

Q. When you undertook to testify about what the reaction of an assured would be to an agent volunteering services, you were not speaking from experience at all, were you, but merely from imagination and theory?

A. Not at all.

Q. You never knew of any other agent to do it and never heard of it, so you said; is that true?

A. I don't recall at the present time ever having an assured complain to me that one of our agents has sought information from him and been denied that information.

[fol. 1225] Q. You say that these brokers don't associate any agent with them except some agent that they have already consulted the assured about. How do you know that?

A. I say that that is my opinion of the way in which the brokers handle such transactions. I am not a broker.

Q. As a matter of fact, a broker this morning testified about a trip that he took down to Kentucky, I believe it was, looking for an agent with knowledge along a specialized line and he didn't say anything about having consulted the assured and the only result of his trip was that he found no agent down there who was qualified to handle this particular type of risk. That would indicate that probably the broker doesn't necessarily consult the assureds about the agent he gets, wouldn't it?

A. But aren't you confident that if the broker had found the kind of an agent he was looking for and was going to send that agent in to deal with the assured, before he sent the agent in to deal with the assured he would ascertain that that agent would be well received by the assured and not walk in there as a stranger?

Q. I would think so.

A. That is really all I testified to.

Q. I see no reason why that practice shouldn't be followed in Virginia under this new law if the brokers want to take the trouble to do it and continue a successful cooperative basis in the spirit in which the agents of Virginia have indicated that they will accept it as shown from the testimony in this case?

A. Or provided the assured is willing to have a third party come into the transaction.

[fol. 1226] Q. Of course, if the assured does not desire

contact with the agent, I don't suppose the agent will force himself on him. I wouldn't think so. Would you?

A. I certainly wouldn't. It would be most unwise to try to crash an assured's gate if the assured didn't want me in.

Q. You have no reason to think that any competent insurance agent would do a thing of that kind, have you?

A. It isn't my function to object to your question but, really, is that a proper question to ask one in my position? What do I know about agents, or what goes on in their minds and what some agent will do and what another one won't do?

Q. You were saying awhile ago what you thought these assureds would think about a thing like that. If you know what goes on in the mind of the assured, it seems to me you would know just as well what goes on in the mind of an agent.

A. Well, to answer your question, no, I don't see any reason why an agent should do that.

Q. These New York brokers up here frequently, or sometimes at least, change their risks from one company to another for one reason or another, don't they?

A. Yes, they do.

Q. And they feel that they are the owners of that business and I believe the insurance companies also recognize that same ownership, don't they?

A. The broker is the representative of the insured. So in dealing with a broker you are dealing with the assured.

[fol. 1227] Q. The Courts seem to hold a little differently from that on some points but that is not necessary to go into here. The broker feels that he should be regarded by the company as the owner of that business and that the company should not undertake to exercise any influence on the assured to prevent him from transferring that business to another company if he so desires. Isn't that true?

A. You are using pretty broad terms. You say the company recognizes the broker as the owner of the business?

Q. So far as the company is concerned.

A. I don't know just what you mean by the owner of the business. I can say, if this is the answer that you are looking for, a company deals with the assured on a brokered risk only through the broker and would not consider it proper practice to go direct to the assured over the broker's head or behind the broker's back in order to try to persuade the assured to stay with the company when the broker is

trying to take the risk to some other company. I think that is an answer to your question.

Q. Yes, that answers my question. In the testimony taken a few days ago at Richmond in which the engineer of either your company or one of the others—I don't recall which—was on the stand (I believe it was probably the Travelers Company), he stated that it was customary, certainly for him, and I understood you to say it was customary in the inspection and engineering departments of the companies generally which have those departments in Virginia, to immediately contact the assured without permission of the broker or producing agent, or to contact the assured's representative, and go in there and get all sorts of information as to the manner in which a plant is being operated or a fleet of trucks is being operated and that he did not consider that [fol. 1228] he was trespassing upon the broker's rights in the matter at all. Is that in conflict with what you have just stated, that the company does not contact the assured except through the broker?

A. No, it is not in conflict at all. They are two very different functions. Performing engineering service for the risk is something that the broker is not interested in at all except to see that proper engineering service is rendered. It has nothing to do with solicitation of the business or keeping it from going from one company to another. A broker has no objection whatever, in my experience, to having the engineers call and service the plant engineering-wise without the broker's presence or specific permission. It is taken as a matter of course. It is all part of the way the business is handled. A broker not only acquiesces in it but he wishes it done that way. He can't run around every time an engineer is going to inspect a boiler or turbine, or something of that sort, and be present. He would serve no useful purpose and add nothing to the value of the inspection.

Q. But this engineer was talking about conferring with the Superintendent at the plant or the head of the state branch of a manufacturing plant, or something of that kind, with a view to inducing the company to spend some money in improvements so as to reduce losses and also holding meetings, with the employees, safety meetings, and instructing the drivers, and various types of service.

A. Certainly, that is all part of engineering service, what

the brokers not only expect but demand. It is the proper handling of an insurance risk.

Q. It was also testified that one of the main reasons that companies did that was to make themselves valuable to the [fol. 1229] assureds so that the assured would desire to continue that company on that risk. Is that true or not?

A. Of course it is true. It is all a part of intelligent insurance.

Q. Then wouldn't that be calculated to prevent the broker from being able to take it away from that company if the service rendered was so satisfactory that the assured would feel that he would desire to keep that company?

A. It is operating an insurance business in an intelligent manner.

Q. I understand that but I say would it have that effect?

A. Naturally, any assured wants to deal with an efficient insurance company, not one that doesn't know its business.

Q. So that it would have the effect of preventing the broker from absolutely being able to take that business away from the company, wouldn't it?

A. No, it wouldn't have the effect of preventing the broker from doing it because there are many companies in the business whose engineering services are comparable with one another and he has the choice of perhaps half a dozen. One is just as efficient and careful as another and he has a free choice between them.

Q. That would depend to some extent upon the type of inspection and engineering service they might have in Virginia, wouldn't it?

A. Companies who are well organized have uniform service throughout the country in all the states where they pretend to operate.

Q. Doesn't the efficiency of the service and the skill of the people conducting that service in a state depend to quite a large extent upon the volume of business which the casualty company has there and the amount of money it can afford to spend to keep that up in proportion to the volume of business it does?

[fol. 1230] A. I shouldn't say the service varied materially in quality with the volume of business done in the state because we insist upon having our inspectors of a minimum grade of intelligence, experience and expertness and if we have a large volume of business in a given state

we simply have more of those inspectors. If we have a small business we have fewer inspectors but each of those is able to render just as satisfactory service as any unit in the larger states.

Q. It was claimed by one of the witnesses at Richmond that the Travelers has a very superior service and better paid men in Virginia than any other company. This was a Travelers agent, however, who made that statement.

A. I would expect the Travelers to say their service was better.

Q. This agent also, I believe, represented one or two other companies, if not your company, also. I am not sure about that.

A. Anyway, you don't expect to get me in a fight with somebody who testified down in Richmond last week, do you?

Q. How many engineers do you call a corps?

A. Well, we have varying numbers of engineers in various territory. It altogether depends on the needs of the territory.

Q. How many do you have in Virginia?

A. I don't know offhand without consulting the records. Engineering service follows volume of business more than it does straight state lines. In other words, it is conceivable that an engineer whose office and desk is in Washington, D. C., might service northern Virginia. An engineer whose office and desk is in some place in North Carolina might service some points in southern Virginia. So it would be [fol. 1231] very difficult to say how many engineers we have in Virginia.

Q. It might be like the broker who was on the stand this morning. He has one engineer who services the whole United States. That is doing pretty well, isn't it?

A. I never heard of an engineer attempting to cover such a territory.

Q. Is there any reason that you know of why, if the local Virginia agent respects the rights of the broker to the business which the broker produces to the same extent that your company does, that resident agent should not make such contact with the representatives of the assured in Virginia as is necessary to enable him to render the service which a resident agent usually renders, on the same theory that your engineering force feels that it has the right to

contact the assured in order to render the service which it is supposed to render?

A. If the broker has no objection to having the local agent interest himself in the broker's risk in Virginia and if the assured has no objection to having that local agent function in connection with that risk, we would, as a company, have no objection to his functioning if he could be of any service to the assured or the broker or to us.

Q. Would your engineering department fail to contact the assured because the broker thought your company was possibly trying to make itself too solid with the assured or what would be the attitude of your company in a case of that kind?

A. We always insist upon properly engineering a risk and if the broker refuses to let us engineer a risk in a manner that we consider necessary for a proper handling of the business, we ask the broker to take the business somewhere else.

[fol. 1232] Q. Then you refuse to keep the business at all unless you are not prevented, so to speak, from contacting the assured?

A. Unless we are permitted properly to engineer the risk. If the broker wants to go along with our engineer, we have no objection to his going but the broker naturally doesn't want to trot around that way because he performs no useful function, standing around on one foot and then the other while the engineer crawls into a furnace or puts a magnetic flux test on a turbine or something of that sort. He doesn't want to waste his time.

Q. He might be a little help in some of these safety meetings, mightn't he?

A. He might and if he is interested he is welcome to be there and Heaven knows we would never take any steps to prevent his being there. If he wants to know when safety meetings are going to be held, we will gladly tell him.

Q. Did you ever hear of one of them going to a safety meeting?

A. I have no doubt they frequently do.

Q. Do you know of any case in which one ever went?

A. I don't run safety meetings. I don't think I have ever been out to a plant to attend a safety meeting, so I couldn't say in this case the broker was there and in the other case he wasn't. I have no doubt, inasmuch as they are intelligent men and very much interested in all phases of the

business, that they not infrequently do attend those meetings to see whether the company knows its business in conducting such meetings.

Q. Would you say that a broker who didn't attend the safety meetings would not be properly servicing the risk?

A. I wouldn't say that.

[fol. 1233] Q. I understood from the testimony of the engineer that they didn't wait to get the consent of the broker to contact the assured but did it immediately on receiving one of these forms that Mr. Christian filed as an exhibit down there which was supposed to be, in effect an order to them to go ahead and do that inspection?

A. I don't understand the Attorney General is asking me any question. He made some declaratory statement about what had been testified.

Q. Is that your understanding of the situation?

A. It is my understanding that when a broker places a risk that normally requires engineering service for proper and intelligent handling, he expects the company to proceed immediately with that engineering service without any specific order from or permission from the broker. It is understood to be normal procedure for the company to proceed immediately with engineering service.

Q. As a matter of fact, did you ever hear of a broker objecting to it?

A. Objecting to a proper engineering service?

Q. Yes, to the engineering department contacting the assured or any of its representatives?

A. I don't recall ever having heard of such an objection but if it were registered it would probably be registered with the engineering department, not with the underwriting department, and would be straightened out between the broker and the engineering department.

Q. You spoke of a single risk and I understood you to use that term in the sense of a risk covering different units or plants of a large corporation situated in different states, perhaps a half dozen different states. Did you mean to use the words "single risk" in that sense or did I misunderstand you?

[fol. 1234] A. Ordinarily a single risk means a given policy. That policy might cover one plant in one location or it might conceivably cover fifty plants in fifty locations. It would still be a single risk.

Q. That was the point I was getting at, whether you

meant by a single risk any necessary connection between the plants or whether you just referred to the policy which was written covering all of these various risks? You were referring to the premium which would be applicable to a single risk of that kind.

A. In reply to Mr. Christian's question, or perhaps yours, as to whether it made any difference in the premium paid by the assured if he dealt on one unit of the risk or if he swept them all together in a broker's hands to cover the whole country.

Q. Yes, something along that line.

A. As I recall my answer to that question, I said it couldn't be answered in sweeping terms because there were [fol. 1235] occasions in which there would be a difference in rate in that a given unit of business of moderate size might take a higher rate than that same unit would take were it part of a larger aggregate of business.

Q. But where they are completely disconnected in their operations, there is no reason why a separate policy shouldn't just as well be written as one policy, is there?

A. If I understand your question, we will say that there is a small plant in Virginia. It would make no difference in the rate for that plant, that plant having no connection with any other plant, whether the risk were written through a Virginia agent or through a New York broker.

Q. You mean if it were written as an isolated risk?

A. As an isolated risk.

Q. If it is combined with risks in other states——

A. That might make a difference in premium in some classes of insurance and under some circumstances.

Q. So that the net result would be that if there was a chain store, we will say, that had a certain number of stores in Virginia and had them scattered all over the United States, they get cheaper insurance than an individual store in one of those states would get by reason of what you call interstate rating or something of that kind that was applicable to a situation covering a larger volume of premiums?

A. That might be true. I tried to make it clear that you can't answer the question generally because it is subject to all sorts of qualifications. An individual grocery store in Virginia, we will say, takes a given rate. That would be the rate applicable to that store, no matter who placed the business as an agent or broker. However, if that store were

[fol. 1236] part of a nation-wide chain, that whole nation-wide chain might be entitled to an experience rate based on the experience of the country-wide operation, in which case, although the experience on that particular Virginia store might be bad and justified, for that particular store if written individually, a higher rate, the experience of the entire chain might entitle that store to the overall rate which would be lower than the store could get individually. You can't answer a question without qualifications and running into all of the ramifications of the various lines of business.

Q. Is that the only difference, the experience rating?

A. I mentioned automobile fleet rates as distinguished from single car rates.

Q. Let us confine ourselves to the chain grocery now. Is the only difference in the interstate rate the application of the experience that you spoke of to influence the rate? Is that the only consideration that influences an interstate rate covering a large number of stores located in different states?

A. No, that isn't the only difference. A rate for a fidelity bond, we will say, is one-half of one percent, fifty cents a hundred. A single grocery store down in Virginia, if it wanted to bond three or four clerks, would have to pay that rate. However, if it were part of a nation-wide chain of grocery stores, producing a volume of fidelity insurance in toto of $5,000,000, it might get a rate as low as thirty cents or twenty-five cents on volume.

Q. In other words, it enables a chain store to buy its insurance or surety, or whatever you call it, at a cheaper rate than the individual would be able to buy it on account of that large volume you just spoke of?

[fol. 1237] A. The same way that you could probably buy a bag of cement for eighty cents if you buy a million bags, whereas you have to pay a dollar if you go down to your local building supply house and buy one bag and have them bring it up for you.

Q. That was the point I was getting at. It does give these large chain stores an advantage over an individual operator?

A. I suppose volume buying always has its advantage.

Q. That is one of the main advantages these chain stores are supposed to have and the point I was trying to bring out was whether that applied to their insurance the same as it does to their other matters and I believe you say that it does?

A. I have explained circumstances in which it does make a difference. There may be others in which it doesn't make any difference. I have tried to make it clear that your question can't be answered in such a manner as to cover the whole field of insurance.

Q. You said you couldn't imagine any way in which a local agent could be helpful to a contractor who wanted a bond to secure the performance of his contract, I believe, didn't you?

A. No, not exactly that. As I recall it, Mr. Christian said the contractor secured a contract down in Virginia and filed a bond and has gone down there and started to work and he wanted to know if there was any way that the local agent could be of service to him in performing that work and I said I couldn't think of any way in which he could be.

Q. One of the witnesses, Mr. Boswell, I believe it was, testified that he believed that he rendered quite an effective service to his clients of that type, particularly those who [fol. 1238] come into Virginia from outside the state, by providing them with information as to subcontractors and their efficiency and reliability and responsibility, and matters of that kind, which would be helpful to them in carrying on their contracts. Do you agree with that, that that is one of the services that an agent might render?

A. If I were a contractor I don't think I would seek credit information about subcontractors through insurance agents, and I don't think that the large contracting concerns doing an interstate business, with which I am familiar, seek their credit information from such sources.

Q. You might seek it if you had confidence in the agent and he had devoted a great deal of time on that subject so as to be able to furnish you with the information?

A. If I thought he was a widely informed and well thought of man I might seek his counsel, not as an insurance agent but simply as a widely informed man, just as I might ask a doctor the same information if the doctor happened to know the man I was planning to hire.

Q. You think you are pretty well qualified to say what is going on in the minds of these contractors, although you didn't seem to think you could do that as to agents a while ago?

A. I said that if I were a contractor I would not seek credit information, I don't think, from insurance agents, that is, credit information about subcontractors.

Q. How do you know what you would do if you were a contractor?

A. Well, one has a general idea of the way he conducts his life and the way he does business.

Q. And you don't think that an insurance agent who made [fol. 1239] a speciality of informing himself about those things could give any helpful information?

A. I didn't say that at all. I have no doubt that he could give helpful information. I don't think that he is usually sought out by an out-of-state contractor as a source of credit information about subcontractors. I think the contractors usually deal through their associations and their reporting agencies and their credit agencies that they maintain and the Bureau of Contract Information in Washington that they support for information about contractors. I don't think that they generally seek that information from insurance agents.

Q. I suppose you probably have in mind very much larger types of confracts than we have in Virginia. They are usually not so very large, probably $100,000 or $200,000 or something along that line. I don't suppose that this agent would undertake to inform a man who has a ten million dollar contract about subcontractors all over the country but these were aids that he said he was giving with reference to business in Virginia.

A. I, of course, don't presume to contradict Mr. Boswell, or whatever his name is, as to what he has been doing. I don't know anything about what he has been doing.

Q. You don't know anything about whether agents render that type of service or not?

A. I don't know of any contractor clients of ours who seek information about material men and subcontractors, as a practice, from insurance agents. There may be such clients of ours who do that but I don't know that they do.

Q. You don't know how they get their information, do you, except as a sort of guess?

[fol. 1240] A. I know that they maintain, at considerable expense, the Bureau of Contract Information in Washington which is engaged in gathering the performance records of contractors of all types and sizes all over the United States. I presume, in that they are spending a great many thousands of dollars a year in maintaining that Bureau for the purpose of knowing about the capacity and responsibility of contractors, that they use it.

Q. You are speaking of these large contractors?

A. I am speaking of contractors, large, small and middling.

Q. Do all of them belong to that association?

A. Not all of them, no. I know that contracting organizations in localities, sometimes rather restricted localities and sometimes rather wide spread localities, maintain credit associations for the sole purpose of gathering data regarding subcontractors, material houses and others. Those are expensive organizations and I presume they use them.

Q. You really don't know anything about it, do you?

A. No, I don't know anything about it except I am sure people do buy goods in stores that continue to exist and I presume if a contracting organization supports a credit organization it uses it. Perhaps it is a fanciful supposition.

Q. Do you dispute the fact that that is a valuable service which these agents render, or not?

A. I think any information is valuable if it is sound information, whether it comes from a doctor or a lawyer or a merchant or a thief.

Q. Do you think that a local man would probably know more about the capacities of these local contractors than a Bureau in Washington or is it your idea that the Bureau in Washington would know more about it, just like you think [fol. 1241] the broker in New York knows more about what is going on in Virginia than the local agent, or apparently you think so.

A. I never said that a broker in New York knew more about what is going on in Virginia than a local man. The Bureau in Washington doesn't state conclusions; it gathers facts. It is able to give to a contractor, who is interested in hiring a given subcontractor, the facts that he has performed this list of contracts, that the architects in each one said that the work was satisfactorily performed, that the material men in each case said the subcontractor paid his bills promptly or discounted them or was thirty days or ninety days late or had to be sued. The Bureau doesn't pretend to give any opinion. It gives facts.

Q. If the contractor wants an opinion he would probably get it from the local agent there as to which one would probably give him the most efficient service, wouldn't he?

A. If he had contact with a local agent and valued that man's opinion, I presume he would consult him. I don't know.

Mr. Christian: As a supplement to Plaintiffs' Exhibit 3 in this case and Plaintiffs' Exhibit 3(a), I file a copy of a bulletin that Mr. Walter Bennett sent out to the members of the National Association of Insurance Agents under date of November 3, 1937, and a copy of the agency agreement of Fidelity & Casualty Company of New York, with interlineations showing the way that agency agreement would read as the company agreed with Mr. Bennett that the agreement should be construed. I will ask the Reporter to identify these as Plaintiffs' Exhibit 3(b) as to the bulletin from Mr. Bennett and Plaintiffs' Exhibit 3(c) as to the revised form of contract.

(Here follow 2 photolithographs, side folios 1241a-1241b.)

PLAINTIFFS' EXHIBIT 3-C

Agency Agreement

WITH

The Fidelity and Casualty Company of New York

"America Fore"
Insurance and Indemnity
Group

APPLYING THE INTERPRETATION AND CONSTRUCTION HERETO, AS AGREED BY THE COMPANY ON NOVEMBER 1, 1939, THE F AND C AGREEMENT WILL OPERATE AS INDICATED ON THE AMENDED COPY.

AGENCY AGREEMENT

THIS AGREEMENT, made this _____ day of _____ A.D. 19 ___,

by and between _____

_____

of _____ in the County of _____

and State of _____

hereinafter designated as "Agent", and THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation duly organized and existing under and by virtue of the laws of the State of NEW YORK and having its principal office in the City of NEW YORK and State of NEW YORK, hereinafter designated as "Company":

WITNESSETH THAT:

Pursuant to request that the underwriting facilities of the Company be made available to the undersigned, as Agent, the Company hereby grants authority to Agent to receive and accept proposals for such contracts of insurance covering risks on properties located in _____

_____

as the Company has authority lawfully to make; subject, however, to restrictions placed upon such Agent by the laws of the state or states in which such Agent is authorized to write insurance business and to the terms and conditions hereinafter set out.

IT IS HEREBY AGREED between the Company and the Agent as follows:

(1). Agent has full power and authority to receive and accept proposals for insurance covering such classes of risks as the Company may, from time to time, authorize to be insured; to collect, receive and receipt for premiums on insurance tendered by the Agent to and accepted by the Company and to retain out of premiums so collected, as full compensation on business so placed with the Company, commissions at the following rates, viz:

SCHEDULE OF COMMISSION ALLOWANCES

Liability—except as stated below	Per Cent
" Employers	" "
" Automobile on Public Passenger Carrying Risks	" "
" " Longhaul Truckmen Risks	" "
~~Safe Driver Reward Plan~~	
Workmen's Compensation	" "
" " Volunteer Firemen's Section 205 N. Y.	" "
~~Incorporated Budget Plan (Minimum Premium only)~~	
Property Damage and Collision—except as stated below	" "
" " " " Automobile	" "
" " " " Automobile on Public Passenger Carrying Risks	" "

" " " " Automobile on Public Passenger Carrying Risks _____ " "

" " " " " Longhaul Truckmen Risks _____ " "

~~Safe Driver Reward Plan (Property Damage Only)~~

Burglary _____ " "

Securities Insurance Policy—Outside Messenger Hazard _____ " "

" " " Premises of Assured _____ " "

Plate Glass _____ " "

" " Inspection and Claim Service _____ " "

Steam Boiler, Engine, Flywheel, Machinery and Electrical Equipment _____ " "

Accident & Health— ~~[illegible]~~ " "

Safe Depository Liability _____ " "

Compulsory Automobile Liability _____ " "

Combination Residence ~~[illegible]~~ _____ " "

In the event of termination of this Agreement, the Agent having promptly accounted for and paid over premiums for which he may be liable, the Agent's records, use and control of expirations shall remain the property of the Agent and be left in his undisputed possession.

It is a condition of this Agreement that prior but not subsequent to the termination hereof the Agent shall refund ratably to the Company, on business heretofore or hereafter written, commissions on cancelled liability and on reductions in premiums at the same rate at which such commissions were originally retained.

(2) For the convenience of the Agent the Company will send monthly to the Agent a record of the business of the month placed by the Agent with the Company, the premiums on which, if collected by the Agent, shall be paid to the Company promptly thereafter.

(3) Company shall not be responsible for Agency expenses such as rentals, transportation facilities, clerk hire, solicitors' fees, postage, advertising, exchange, personal local license fees, ~~[illegible]~~ or any other Agency expenses whatsoever. Company will be responsible for any company expense it authorizes the Agent to incur.

(4) Any policy forms and other like Company supplies furnished to the Agent by the Company shall always remain the property of the Company and shall be returned to the Company or its representatives promptly upon demand.

(5) The Company reserves the right to cancel any policy or other contract of insurance or suretyship by direct notice to the insured or obligee, upon giving the Agent prior notice of such intention.

(6) The Company may at any time, by written notice to and mutual agreement with the agency, change the schedule of commission allowances.

(7) This Agreement supersedes all previous agreements, whether oral or written, between the Company and the Agent and may be terminated by either party at any time upon 30 days written notice to the other.

IN WITNESS WHEREOF the Company has caused its corporate name to be subscribed hereto and the Agent has set _____ hand and seal on the day and year first above written.

THE FIDELITY & CASUALTY COMPANY OF NEW YORK

ATTEST:

By _____

_____

_____
(Agent)

[fol. 1242] COURTLANDT OTIS, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. What is your present business connection and occupation?

A. President of Otis-Jones & Company, Inc., and partner in Otis-Jones & Company, a partnership, both engaged in the insurance brokerage profession.

Q. Where is your office address?

A. 90 John Street, New York City.

Q. What were your prior occupations to this one, if any?

A. The same.

Q. What sort of personnel do you have in number and in classification besides the partners?

A. Besides the partners we have ten employees and associates.

Q. Do you produce in New York any casualty, surety or fire risks covering in other States?

A. Yes.

Q. What part of your business would you say is this out-of-State coverage in premium volume?

A. Approximately one-third.

Q. What sort of casualty and surety risks are so produced?

A. It is general.

Q. Is the coverage outside of New York confined to one or two States or a good many?

A. Right many States.

Q. As to this out-of-State coverage in which we are interested, is it usually rated by the manual or equity or experi-
[fol. 1243] ence rated? Of course, if there is no usual rating and it is sometimes one and sometimes the other, you are at liberty to say that.

A. That is what it is.

Q. Some of all kinds?

A. Some of all kinds.

Q. In the case at bar the issue has arisen whether the New York broker is able to produce this business covering outside of his own locality because of his personal relations with the officers and directors of the assured and the desire of these people to have a friend or relative receive commis-

sions, or whether there is a sound economic reason for the New York producer occupying the status as the producer of the business. I will ask you to state from your experience and observation what is ordinarily the fact as to this?

A. We handle several nationwide accounts and we haven't a single one of them that we secured through knowing the officers or directors. We secured them on a purely merit basis.

Q. Where you have accounts covering outside of New York, could you give me some idea of the different lines of business in which these assureds are engaged?

A. A dairy company, cement companies, public utilities, paper companies, textile and leather.

Q. Are the paper, textile and leather people to whom you refer manufacturing people or simply middle-men?

A. Manufacturing.

Q. Could you give the Court an explanation of what it is about you that makes it economical for these assureds to [fol. 1244] give you their coverages in places remote from New York?

A. From our experience it is always advantageous for a concern doing an interstate business to have its insurance handled by a brokerage house and written in one policy of insurance, and that brokerage house should be located in the city where the executive offices of the assured are located.

Q. What are the advantages from covering a particular risk—we will say the Workmen's Compensation exposures of that company—with one insurance company and handling the compensation matters that come up only with that one brokerage house?

A. I would like my answer to refer not only to Compensation but to other lines of insurance. The first thing that you gain by having the insurance placed through one brokerage house is that you get a better form. We are able to work out a better form to be attached to the policy so that the coverage is much broader than the individual policy would afford. Secondly, with the volume of business being placed in one policy, you are able to work out a better rate than you could with individual rates applying in the individual States and, thirdly, when it comes to the question of analyzing the loss experience and making suggestions for improving that experience, it can be done only through a source that has all of the various locations in hand.

Q. In the case of these risks do you ordinarily place them with some general agent of the company or do you place them either directly with the Home Office or with a Branch Office?

A. We do both. We place, I should say, largely through the New York offices of companies but once in a while we use a general agency.

[fol. 1245] Q. Where you deal directly with the company does this have any effect on reducing premium rates at times?

A. No, I wouldn't say that it does. We do equally well with companies and general agents.

Q. How does such a producer go about selecting the company with which to place any particular risk?

A. We know our markets pretty well and we analyze the risks, the insured's business, the type of covers that we wish, and then we go to the company that we feel can best write that line of business.

Q. You are always able to make an original selection of a company that proves wise in performance, or do you ever have any occasion to change a company after you place a risk?

A. We very seldom change risks from one company to another. We naturally first select a company for its loss-paying ability. That is the most important thing from a broker's standpoint, to make sure that the losses will be paid if and when they arise.

Q. Do you scatter your business around, depending on the risk?

A. Yes, we use various companies.

Q. You don't look to any one as preeminent in all lines?

A. No.

Q. Do the assureds question the selection by such a producer of the company or question his change of the company on the rare occasions when he may change it on a renewal date or mid-term?

A. No, they take our word for those things.

Q. What about your ability to change an insured from a [fol. 1246] mutual company to a stock company or from a stock company to a mutual company, assuming they are all g od companies?

A. We don't place business with mutual companies.

Q. Assuming that you did change your policy in that regard, would you suppose you would have the ability to place business with them if you recommended it to your clients?

A. I would like to qualify that. We do do business with one mutual company which writes a non-assessable policy and has been in business almost a hundred years, and they operate through brokers and do not attempt to deal directly with the assured.

Q. Have you ever had any experience in trying to get people out of a mutual company into a stock company?

A. Yes, often.

Q. Does that enable you to form an opinion as to whether it is a rare thing to find a responsible assured who likes mutual companies, or whether it is a frequent thing to find responsible assureds who like them?

A. It is a frequent thing.

Q. Would that form a basis for enabling you to say whether if you change your policy and decide to boost the mutual companies, you could get assureds to go into mutual companies?

A. Oh, yes, we could quite easily.

Q. In placing excess insurance or on any other occasions do you ever find that, all things considered, it is best to place insurance with a company not admitted to the State of coverage or do you pretty generally try to get one that is admitted to the State of coverage even if it is an excess insurance line?

[fol. 1247]. A. We never consider that. We never ask the excess company whether it is admitted or not admitted. It doesn't make any difference. We are not interested at all.

Q. In other words, an excess company can serve your purposes just as well whether it is admitted or not admitted?

A. Absolutely.

Q. Our record isn't very clear about the volume of excess insurance. Is that a substantial part of the average broker's production or not?

A. Well, there is quite a bit of it. I don't know what would be meant by the word "substantial" but we write several policies covering large risks, nation-wide risks, in our office on an excess basis.

Q. And the assured covers himself up to a certain stated amount and he has insurance from the company for losses on those exposures above those amounts; is that right?

A. That is the usual way, but we also have contracts where the primary company carries a certain amount and then there is an excess over that but it usually insures itself for a certain amount and then an excess covering over that.

Q. Is it your general conception that the leading brokers occupy at least as good a position in the metropolitan business community as the leading agents do in the small communities of the country as to their relative positions in the community?

A. Exactly. There are no what we call local agents in New York City. They are all general agents who represent companies and act as branch offices and Branch Managers for those companies.

[fol. 1248] Q. And you brokers represent, in a substantial sense, the true producers and are in direct contact with the public?

A. We are the producers in connection with the public.

Q. And the true producer is almost exclusively numbered among your class of brokers?

A. Yes.

Q. What is the reason, do you suppose, why the assureds should place business in this vicinity so exclusively with gentlemen not representing the companies but gentlemen who are only devoted to the interests of the assureds?

A. The trend throughout the country today is for the producers to be brokers and not agents. You will find that the larger agents in the big cities throughout the country are today in the main becoming brokers, the reason being that a broker can pick the company that he feels will best serve the interests of the assured and is not restricted to the few companies that he may represent as agent. That is a very definite plan. For example, New York and San Francisco were the only two cities for a long time that had brokers' organizations but today we have brokers' organizations in Chicago, St. Louis, Philadelphia, Boston, and they are being formed in other cities.

Q. Speaking about the fact that you brokers exclusively represent the assureds, what is the effect of this status when you come to deal with the companies on a coverage question or claim settlement where it is a matter of indemnity rather than a third party claim?

A. Never having been an agent for a company, I don't [fol. 1249] know, but I feel that naturally an agent is much closer to a company than a broker is. We get our claims

settled very promptly because we deal with companies that have excellent loss-paying records and want to do the right thing in regard to the public.

Q. Have you ever, in your experience, thought it might be advantageous to you to associate in some line of business with you a man who occupies the status of an agent to a company simply because of the fact that you thought he could get better cooperation from the company in connection with the engineering of the risk or handling claims?

A. No.

Q. Do you brokers ever find it expedient to divide your commissions of your motion with agents in coverage localities in order to make their services available to you for general or special purposes in connection with the contracts?

A. No, we have never voluntarily divided our commissions with any agent nor have we ever felt the need of doing so.

Q. Do the assureds ever ask a firm such as yours, according to your experience, to let some local agent in on a piece of business somewhere?

A. Very seldom. We have only one client who has ever requested that procedure and that is a public utility which, for public relations reasons, feels that a small portion of the commission should go to an agent in a particular locality.

Q. Is that in connection with fire lines or casualty and surety?

A. Both.

Q. Have you found in that case to which you refer that you have been relieved of any part of your work or respon- [fol. 1250] sibility because of that association? If so, please say to what extent it has relieved you?

A. No, they have absolutely nothing to do with the servicing of the risk. We do it all here from New York City and this commission is taken by them as a form of velvet.

Q. What experience have you had in recent months since they have had these fifty-fifty laws in some of the States with reference to companies in which you sought to place business telling you that they had to give part of the producer's commission to a local agent and asking you to give up a part of your commission to provide a fund for the payment to the local agent? Have you had any of them?

A. Some companies have said that that had to be done

and other companies haven't made any mention of that whatsoever.

Q. Have you acquiesced where they have asked you to give up part of the commission or have you failed to acquiesce?

A. In one or two cases we have acquiesced but we are planning to take that business away from the companies upon renewal.

Q. Did you have any hesitation in making it plain to your assureds that that is the reason you were taking it away from the company?

A. No, we intend to tell the assured about it.

Q. How will you justify that?

A. We make it very plain to our assureds that we need every bit of the commission that we receive to properly service their risks. At this point may I say that the assureds in one or two cases, where they have found that we have to pay a local agent merely for the reason of putting his name on the policy, are very much surprised at this procedure in the insurance business and feel that it is an imposition, not only upon the insurance broker who services [fol. 1251] the risk but also upon themselves.

Q. In fire business do you know what the countersigning agents in the coverage localities get or is that something that is handled without your knowledge of its details?

A. I haven't the slightest idea as to what they get. I understand it varies greatly according to the locality and the agency.

Q. Does what you receive for producing fire business vary?

A. Yes, that varies too.

Q. Within what limits of maximum and minimum in the past twelve months, would you say?

A. It has varied between ten per cent and twenty per cent.

Q. You have gotten as high as twenty per cent even in the case of these coverages in which I am interested and which are quite removed from the metropolitan area?

A. Yes.

Q. It is in contemplation of these Virginia agents, under a resolution that they adopted in February, some time after this suit was brought (and when I speak of the agents I refer to the Virginia Association of Insurance Agents, Inc., which is our State organization) that one of these Virginia

countersigners is going to carefully investigate a risk and contact the assured and find out all about the conditions governing the kind of coverage he needs and then is going to make a careful check of the policy in all respects, including rating, and then he is going to service that risk after he countersigns it from the time the contract becomes effective until it expires, notwithstanding that an out-of-State [fol. 1252] man is the producer. I ask you whether you would view with alarm, favor or indifference the introduction of such a third party into your affairs where the coverage is outside of the metropolitan area?

A. We would view it with alarm and disfavor.

Q. Could you explain the reasons for that?

A. Yes. In the first place, the forms that we devise for the coverage of our clients are forms that we have worked out over a period of a great many years and they are far superior to the forms that are generally in use by the company. Therefore, we certainly do not wish any other agent or broker to see our forms if it can be helped. Secondly, we do not wish any other agent or broker to contact our assured for the reason that they may say or do something which would interfere with our pleasant relationship with that assured. Thirdly, the agent could absolutely be of no use to us so far as engineering and other services are concerned because these services are rendered by the company which is much better qualified to do it than any agent.

Q. Your office's practice, before you deliver a contract to an assured, is to make a record of the name and address of the countersigner of that contract in the several states in which it may have been countersigned by a commission agent?

A. No, we never make any such record.

Q. Would you be any more inclined to make a record in a case where he had gotten half of the commission than you would in a case where he got a fourth of the commission for countersigning or anything else he proposed to do?

[fol. 1253] A. We don't intend to stand for half of our commission being given to a local agent.

Q. I wasn't assuming that it is going to come out of your pocket; I was assuming that it is going to come out of the companies. Do you care what he has gotten for countersigning or would you be any more inclined to keep any record of the identities of these various countersigners because

the company had paid them more or less for doing the countersigning?

A. No.

Q. What employee of an assured in your experience usually places its insurance contracts?

A. In 99 cases out of 100 it is either the Treasurer or the Insurance Manager working under the Treasurer.

Q. Where is that man usually located with reference to the principal office of the assured?

A. He is usually and practically always located in the principal office.

Q. Do you find that there is anything in your relationship with such a man that could fairly be considered confidential in respect to the information about the operations of a corporation which he confides to you and the carrying Company?

A. That is the rule rather than the exception.

Q. What sort of information is there that those men are called on to supply to you and the carrying company that [fol. 1254] you think perhaps they would not be willing to confide to any countersigning agent in any county of Virginia who happened to come in and wanted to know about that particular line? For instance, do they freely tell you what the salaries of different people in the company are and the tasks of the different people in the company?

A. Yes, we have to have that information. We have to have information on exactly how they operate; we get information regarding subsidiaries which is not public knowledge in any degree. There are loads of cases of information that we are told which is just between the assured and ourselves.

Q. Are you required to know the carrying value of their various assets and, in certain instances, the carrying value of their accounts receivable and the way in which their various plants are operating in various localities and their future expectancy as to operations and things of that sort?

A. That is right.

Q. Do you need to make any inquiry as to the details of the operations from which they make profits and the operations from which they sustain losses and, in connection with use and occupancy on rental value insurance, or are you ever concerned with where they make the money or where they don't make it?

A. We don't often go into that phase of it in that detail. We do sometimes but not often. We take the business as a whole.

Q. You feel that no question, bearing on the exposures of such a corporation would cause you to apologize for your presumptiveness if you asked it and expected an answer to it; is that correct?

[fol. 1255] A. That is correct.

Cross-examination.

By Mr. Staples:

Q. Mr. Otis, are you licensed as a non-resident broker in Virginia?

A. I am.

[fol. 1256] Q. What percentage of your business is fire insurance?

A. Less than ten percent.

Q. And what percent of it is casualty?

A. About 70 percent.

Q. And what percentage is surety?

A. About 15 per cent.

Q. And the other five percent is what?

A. It would be inland marine and marine, fire, theft, and fire and theft, and collision.

Q. Do you look principally after the casualty business or do you also look after the fire business of your office?

A. No, our office operates through each partner servicing his own accounts, so that I will service for my clients the entire insurance set-up.

Q. When you say you service it, what do you mean by that?

A. First of all; we analyze the hazards to which an assured is subject through the operations of his business and we recommend and call to his attention the types of insurance coverage that that firm requires. We discuss with them not only the types but the amounts of coverage. We then draw the forms that should be attached to the various policies, have the policies issued at rates which we feel are fair and just, based upon the experience that the assured has had in the past, and when losses arise we collect all premiums and see that on third party claims the proper attention is given by the insurance companies to those

third party claims. We arrange with insurance companies [fol. 1257] to have their inspectors inspect the risks on all engineering viewpoints; we arrange with companies to have their safety men attend safety meetings of the assured, and do everything possible to cut down the losses because it is an axiom in the insurance business that the only way to reduce rates is to reduce losses. So that we are constantly working with an assured to reduce his losses and then, finally, we take care of all the changes in the equipment and new locations and disposal of old locations that may occur from time to time in the assured's business.

Q. The insured informs you of those changes of location, I suppose, does he not?

A. Yes.

Q. Do these large companies have an insurance manager who doesn't do anything else much except look after the insurance of his company?

A. That is true; they do.

Q. Is he usually a good insurance man, or not?

A. Yes, he is. If he isn't one when he begins, he becomes educated through his contact with the broker. We frequently aid and assist in the education of a man who becomes Insurance Manager for the first time.

Q. After the man becomes pretty well educated he doesn't need you to work out his types of insurance for him and plan his insurance, does he?

A. Yes, he does, for this reason, that the insurance business is constantly changing. New forms of insurance are being devised; companies that didn't feel that they could give certain types of coverage in the past begin to give [fol. 1258] them in the present, and we, as brokers are in constant touch not with just the problems of his own firm, but with the problems of many firms and as such we are able to gain knowledge of these new developments and to bring about the developments in a way that he can't do so that no matter how bright he is,—and I know some very fine and excellent insurance managers,—our assistance and knowledge that we gain through being in the open market is of great value to them and, in addition, we do for them what is awfully hard for them to do and that is to check the loss experience and make certain that the reserves on cases are accurate and also that the proper cases are included in the loss figures.

Q. You mean that a man whose business is solely to look after the insurance of his company doesn't know how to check his loss experience?

A. Not as well as we do for the reason that we have all been in the claim departments of companies and we can do things, with the experience we have had, and get the cooperation of the claim men in those companies better than he can.

Q. Why can you get it better than he can? Wouldn't they pay just as much attention to him as they would to you?

A. No. We are the people that are in constant contact with the company; we give the companies not only the insurance for that particular firm but we give them insurance for a great many other firms and naturally they are going to cooperate with us more than they will with the insurance manager of one firm.

Q. If they are trained insurance men they certainly would [fol. 1259] discuss their problems with one another, wouldn't they?

A. They do theoretically but not actually, for this reason, that all large firms and nation-wide corporations have special contracts and the insurance managers know that those contracts cannot be kept if the details are given to every Tom, Dick and Harry, so they only discuss their problems with each other on a theoretical basis, not on an actual basis.

Q. If you are going to use information that you get from one company for the purpose of assisting another, I don't see any difference in their discussing it with you and in discussing it among themselves. What is the difference?

A. We don't use any information that we get from one client for the benefit of another. We devise forms which we can use with various clients but we are the ones who devise the form.

Q. I thought you said by reason of your familiarity with the insurance details of other assureds that you were able to help each of those assureds by reason of information you get from the others? Did I understand you correctly?

A. No, you must have misunderstood me. What I said or, at least, what I thought I said was that we devised the forms for the various companies that we handle the insurance for.

Q. You think that this insurance manager that they have

looking after their insurance business is not able to devise the forms?

A. I think he can help but he doesn't know the business the way we do.

Q. You think you know more about it than he does?

A. I am confident that we do.

[fol. 1260] Q. And the fact that you think you do know it better than he does is about the only reason that you can see why these big national corporations shouldn't deal direct with the insurance companies instead of going through a broker?

A. Yes, I think that is the main reason. In other words, if they could deal directly with an insurance company and not require the services of a broker, I think they would do it, but they realize that the knowledge that a broker has, plus the assistance that he can render in the settlement of claims, is of great value to them and that is why they employ brokers.

Q. The insurance companies wouldn't deal directly with them. There is a rule that they will only deal through brokers or agents?

A. There have been cases on record where insurance companies have dealt directly with the assureds, but that practice has practically disappeared.

Q. That is regarded as a violation of the ethics of the business, isn't it?

A. You are talking now purely about stock insurance companies, because you realize that mutuals and reciprocals do deal directly with the assured.

Q. I am talking about the same companies you are?

A. I don't know whether it is a violation of ethics so much as a realization by the insurance companies that they can't expect to ask for business from agents and brokers and then at the same time deal behind the agents' and brokers' backs directly with assureds.

Q. That is the reason for the rule, isn't it?

A. It is not a rule; it is a practice.

[fol. 1261] Q. The reason for the practice, then?

A. Yes, I think it is but I am trying to convey that I am not so certain that it is a question of ethics that is involved.

Q. Does your office have associated with it local agents in the fire business?

A. No, we do not.

Q. Do you have any fire insurance business in Virginia?

A. Yes, we do.

Q. Don't those agents down there on fire insurance policies get part of the commissions?

A. I imagine they do.

Q. Do you know of any reason why different rules should prevail with reference to fire insurance and casualty surety in that respect?

A. I don't myself see that the agent in either case renders any assistance and, if he does render any assistance, he renders it from the standpoint of the company and should be paid by the company. So far as the broker is concerned, the agent renders no assistance whatsoever.

Q. You don't know whether he might render some assistance to the assured, do you?

A. When I say to the broker, I mean to the broker and the assured because, after all, the broker is servicing the insurance for the assured and our relations are identical.

Q. If the assured happens to call on the agent down there who countersigns his policy for some service and gets it, he would be rendering some, wouldn't he?

[fol. 1262] A. Yes, but he never does call on the agent who countersigns the policy.

Q. What makes you say that? The agents down in Virginia said differently and they ought to know more about it than you do. They live down there.

A. No, I am afraid they don't in this respect if that is their testimony for the simple reason that the policy of insurance is retained by the assured in New York City and the local Branch Manager in Virginia hasn't the slightest idea of the agent who countersigns the policy. Whenever he wants to call on anybody he writes to the main office in New York and the Treasurer, who receives the letter, then calls us on the telephone and says that the Branch Manager or the plant manager in Virginia would like to have an inspector of the company, or whatever it is, call and see him.

Q. Are you talking about casualty or fire?

A. I am talking about both.

Q. Does the Branch Manager in Virginia have anything to do with business written through your office?

A. Not a bit.

Q. I thought you said he wrote up here and got in touch with you about it?

A. No, I said he wrote to the Treasurer of his company and the Treasurer got in touch with us.

Q. The Treasurer of the insurance company?

A. No, the Treasurer of his own company.

[fol. 1263] Q. You are not talking about the insurance Branch Manager; you are talking about the assured's Branch Manager?

A. Yes, I am talking about the assured's Branch Manager, and the assured's plant manager. We don't deal with the Branch Managers of insurance companies in Virginia. All of our dealings are through their offices in New York.

Q. Through the Branch Office in New York or the Home Office if the company is located here?

A. That is right.

Q. Is there any reason why the local agent in Virginia on the scene of the risk shouldn't be able to render service to the assured's Branch Manager if anything comes up that he feels the agent could be helpful in?

A. Yes, there are lots of reasons. First of all, he doesn't understand the operations of the business.

Q. How do you know he doesn't?

A. He is not thoroughly acquainted, if at all, with the policies that cover that particular assured with the possible exception of the one policy that he may countersign, although I question very much whether the agents keep copies of those policies, and it would be entirely out of order and extremely hard for an agent to give an intelligent answer under those conditions.

Q. Don't you know it is the practice in Virginia for the local agent who handles the countersigning and such service as he renders there to retain a copy of the fire insurance policy?

A. Of that particular policy he may well do it but on [fol. 1264] casualty insurance I know he doesn't.

Q. It hasn't been customary in Virginia for him to countersign casualty policies and, therefore, the rule would be different, but it has been customary, so the testimony shows, for the local agent, the commission agent, to countersign fire insurance policies and retain a copy of the policy. If he does have a copy of the policy, then he would certainly have that much information, would he not?

A. About that one policy.

Q. That is the only policy he is supposed to be servicing, the policy he is countersigning, is it?

A. He is not supposed to be servicing any policy from us.

Q. You mean you don't expect him?

A. We don't pay him anything for doing it. If he is paid any commission by the company it is paid by the company for services that he renders to it. We are not paying him any commission for services to us.

Q. I wasn't speaking of service rendered to you—I was speaking of service rendered to the assured and you are not the assured?

A. No, but we represent the assured.

Q. But you are not the only people who represent the assured, are you?

A. Who else would except the broker?

Q. He has a branch manager down there who represents him, doesn't he?

A. Not in regard to the insurance.

Q. He can represent him if the company wants him to, can't he?

[fol. 1265] A. Sure, he could, but they never do.

Q. If the company feels that they could secure any valuable services from a local agent, there is no reason why the Virginia State Manager of the Company, that is the assured, should not take it up with the local agent and get such services as he desires, is there?

A. Let me understand you. When you say the Virginia State Manager, are you talking about the assured's Virginia State Manager?

Q. Yes.

A. We have never had that happen in our experience but it is possible.

Q. You might not know anything about it?

A. Oh, yes, we would have to know about it because the master policy is written through New York.

Q. How would you know about it if the local Virginia agent attended a safety meeting of the employees or something of that kind? They wouldn't necessarily inform you, would they?

A. Well, I think it would leak out sooner or later.

Q. It would leak out?

A. It would leak out.

Q. Why would it leak out? There is nothing surreptitious about it, is there?

A. It is exactly contrary to the practice. I never in my

life have known of a countersigning agent who attended a safety meeting of an assured.

Q. There is no reason why he shouldn't if the assured wants him to, is there?

A. No, if the assured wanted him to there would be no [fol. 1266] reason why he couldn't attend.

Q. Do you ever attend safety meetings?

A. Yes.

Q. In what States have you attended them?

A. New York and New Jersey.

Q. Have you ever attended any in Virginia?

A. No.

Q. Do you have an inspector employed in your office?

A. No, we use the companys' inspectors.

Q. Do you ever find it necessary to go to the location of a risk and render any service to the assured?

A. Practically never. All of our contacts are performed through the main office of the assured in New York City.

Q. Your practice then is different from Mr. Thomas who is a broker here in New York?

A. Yes, I know Mr. Thomas.

Q. Mr. Thomas testified that they have an engineer employed in their office who travels around over the country and inspects these risks?

A. He may well do it. Some brokerage houses do have their own engineers.

Q. You haven't found it advisable to do it in your practice?

A. No, we prefer to use the engineers of the companies.

Q. These engineers of the companies frequently make recommendations that the assureds spend a lot of money in accident prevention measures, don't they?

A. That is right. That is where we enter the picture.

[fol. 1267] Q. How can you tell anything about the local conditions if you don't go there as to whether these expenditures are necessary? You can't tell from looking at some records and documents up here as to the necessity for that expenditure, can you?

A. We don't attempt to. The assured has his own engineers and we put the problem up to the assured and if his engineers concur with the recommendations of the insurance company's engineers, then the recommendations are complied with. On the other hand, if the assured's engineers disagree with the findings of the company's engineers, then

we get the company men and the assured's men together and find out which are correct.

Q. Is the assured's engineer a resident of New York, usually?

A. Yes, generally speaking, the engineers of the assureds work out from New York.

Q. The assured's State Manager would probably have some ideas himself about the necessity of spending the money, wouldn't he?

A. When you say "State Manager", I imagine you mean plant manager?

Q. Whoever is in charge of the work. It doesn't make much difference what you call him.

A. Yes, and his views are naturally taken into account along with the engineer of the assured who visits the plant.

Q. The engineer for the Travelers testified that in connection with his work of making these recommendations for spending money he had very frequently—I think he said [fol. 1268] in 26 out of 27 cases, or something of that kind—arguments with the local agents down there as to whether it was necessary for the money to be spent and the local agent frequently didn't think so and took the position of trying to protect the assureds from one of two consequences, either having to spend a lot of money or having his policy cancelled.

A. I know nothing of it.

Q. You can see very well that that would be a very appropriate service to render, can't you?

A. To refuse to have——

Q. Unnecessary expenditure; that is, the agent and the assured's manager in Virginia think it is unnecessary and the engineer who, of course, is looking out for the interest of the insurance company and is willing for the assured to spend unlimited amounts of money if it improves the risk, thinks it ought to be done?

A. Well, in the first place, I don't find that the Travelers or any other insurance company generally makes recommendations that aren't warranted. Sometimes they do and, as I have already testified, in those few cases we get the assured and the company together and work it out.

Q. Mr. Thomas testified that that was one of the principal services that he rendered as a broker—protecting the assured from what he considered to be unreasonable demands

of the engineer or inspector of the insurance company. You haven't had a similar experience?

A. Mr. Thomas may place his insurance with companies that do that. We don't.

Q. How do you know whether they are reasonable, or not, [fol. 1269] if you are not down there and don't see them?

A. We know very well from what the assured thinks of it. In other words, who is the final judge as to whether they are unreasonable or not? It is the assured, isn't it?

Q. Not necessarily. The company might cancel the risk, might it not?

A. We are not talking about cancelling of risks; we are talking about whether the recommendations are unreasonable and if they are unreasonable they have to be unreasonable in the eyes of the assured.

Q. Yes, but if the company thinks they are reasonable and says, "We won't carry this risk any longer unless you do certain things and spend certain money," then you have reached the point where the assured is threatened with a loss of his protection or has to spend money, one or the other. That is the point at which the local Virginia agent steps in, according to the testimony of this engineer of the Travelers.

A. If that ever happened, that would be the point that we would step in.

Q. I believe you stated that it is not considered proper practice for a broker to place business involving a risk in a State with an insurance company not admitted to transact business in that State where the risk is located, did you not?

A. No, I made no statement along that line, to my knowledge.

Mr. Christian: My recollection accords with that of the witness. He said that he was not concerned as to whether the company was admitted or not in cases of excess insurance and didn't care, but I did not ask him about cases of other insurance.

[fol. 1270] By Mr. Staples:

Q. What is your practice in other cases in that respect?

A. We are concerned mainly with whether the company can render service in the States that our assureds have

plants or equipment. We are not concerned with whether they are entered, or not.

Q. Can an insurance company render service in a casualty risk, such as Workmen's Compensation or fleet automobile, without transacting business in the State where the risk is located?

A. They seem to be able to. They have claims men who handle claims that arise in those States.

Q. Don't you know that that constitutes doing business in that State?

A. No. In fact, I don't think it does. According to the law of New York, it doesn't.

Q. Do you believe that an insurance company can properly service a risk of either kind I have mentioned without sending its engineers and inspectors and claim adjusters into the State where the risk is covered?

A. They certainly have to from time to time send claim adjusters in. It all depends on whether the assured has a plant in that State or whether he has just a few automobiles that pass through the State.

Q. I was speaking of a fleet automobile risk domiciled in Virginia or a Workmen's Compensation policy covering an operation in Virginia?

A. If you are talking about a fleet of automobiles or a risk that is domiciled in Virginia, obviously they have to [fol. 1271] service it and in those cases we are always certain of having a company on the risk that is entered to do business in that State.

Q. You would not place a risk of that kind in a non-admitted company?

A. Not a risk that is domiciled in the State.

Q. You say you do place excess insurance in companies not qualified to do business in Virginia?

A. I didn't know that my answer to the question was restricted to the State of Virginia but it is possible.

Q. If you place excess insurance you do not inquire whether the company is qualified to do business in Virginia or not?

A. No.

Q. Are you familiar with the terms of your non-resident broker's license issued to you by the State of Virginia?

A. Yes.

Q. Isn't it one of the conditions of that license that you shall not place business in any non-admitted company?

A. As a matter of fact, every excess policy we have, covering on a risk domiciled in Virginia, happens to be in an admitted company.

Q. If you haven't inquired whether the company is admitted or not and haven't paid any attention to that, how do you know that they are all admitted?

A. I do know in this case. We have only one policy covering excess in the State of Virginia and that company is admitted to do business in Virginia.

[fol. 1272] Q. Do the brokers up here have a standard form that they use or does each broker work out his own form?

A. Each broker works out his own form.

Q. Is the primary consideration of a broker in placing a risk to place it in the company which can best serve the assured and furnish the best protection or is his primary consideration the amount of commissions he will receive?

A. No, the first consideration is the payment of losses, whether the company pays losses fairly and promptly. That is the first consideration. Then, secondly, come the other services that a company can render, such as engineering and inspection and various other services and then lastly comes the question of remuneration.

Q. Aren't those engineering services supposed to be very valuable to the assured in reducing his experience rating?

A. Yes. You mean in increasing the experience credit.

Q. Whatever you call it. It reduces the rate?

A. It reduces the rate but not the experience credit.

Q. Could you or any broker in New York, in conformity with the proper and ethical practice, place an automobile fleet risk or Workmen's Compensation risk in a company not admitted in Virginia because a non-admitted company would pay him greater commissions?

A. No, that would be against the ethics of the profession.

Q. I believe you stated also that you would not place any of your risks with a mutual company or do not customarily [fol. 1273] do it, or something to that effect?

A. We do not customarily do it. I stated that there is one mutual company that we do deal with but by and large we do not deal with mutual companies.

Q. Why is that?

A. Well, the primary reason is that we don't like the claim service that they render.

Q. What about their other service?

A. And secondarily we don't think their other services are as good as the services rendered by stock companies.

Q. Is that true of all the mutual companies?

A. All the mutual companies with whom we have come in contact and we have come in contact with the larger mutuals.

Q. Did you ever come in contact with the Lumbermen's Mutual?

A. Yes.

Q. The Liberty Mutual?

A. Yes, and the American Mutual. Those are the three largest casualty mutuals.

Q. Then it is true, is it not, that a broker in New York, conforming to proper ethical practice, would not transfer a coverage of his assured into a mutual company which you say renders very much less satisfactory claim service and other service in order to obtain greater compensation for his placing the risk, would he?

A. I can only speak for our own firm, and our own knowledge in this respect, but it might be that other brokers feel [fol. 1274] that they do give good service. We don't.

Q. If the other brokers feel like you do about it, it would be unethical and improper?

A. That is correct.

Q. You say that the broker's commission is the same whether he places the business through a general agent or whether he places it directly with the company?

A. That is true.

Q. Why is that?

A. For the reason that the general agent takes the place of the company in its underwriting. A general agency serves as a branch office. That is the purpose of a general agent.

Q. And in a case of that kind the company would receive less net premium than if you place it direct, would it not?

A. It is not supposed to when you take into account the cost of maintaining a branch office. In other words, the cost of maintaining a branch office and the commission paid to a general agent are supposed to be analogous.

Q. But still the company would receive less if you placed it through a general agent than if you placed it direct with the company, wouldn't it, in that particular transaction?

A. I have tried to make the point as clear as I can.

Q. The general agent would get the commission, wouldn't he, or part of the commission?

A. Which part of the commission is supposed to be [fol. 1275] analogous to the cost of maintaining a branch office. That is all I know.

Q. Suppose you don't go through any branch office?

A. You have to go through a branch office.

Q. Do all of the companies have branch offices in New York?

A. All the large ones.

Q. Even though they are domiciled here?

A. Yes, sir. The Home Office is distinct from the Branch Office.

Q. You stated that when you work out a program, I believe you call it, for prospective assureds—is that the correct term?

A. That is right.

Q. You take it to the company that you think is best qualified to serve the risk?

A. We may take the whole program to various companies. For instance, we may think that one company is best for the automobile insurance and we may think another company is best for the burglary and robbery and another one for the surety bonds and another one for the inland marine, and another for fire, and so forth. We never place all the insurance for a concern with one company.

Q. You would split it up, wouldn't you?

A. Yes. That is one of the functions of a broker, to know which companies can best serve which types of insurance.

Q. Isn't it also the practice among some of the brokers to place all the lines in one company?

A. It may be, but I don't happen to know of it.

Q. I believe Mr. Thomas testified that he followed that [fol. 1276] practice and it resulted in getting a much better rate for the assured. Do you know anything about that?

A. That is his opinion. We seem to be going along all right on the plan we use.

Q. Would you take an automobile risk, we will say, to more than one company—the same risk?

A. No.

Q. Why wouldn't you get the best offer that you could for the assured and not just get an offer from one company?

A. We have found through experience that shopping a risk, which is the technical term that we use for the practice you have just expressed, results in higher rates for the assured. Companies will be more cooperative and work out plans with you a lot better if they feel that they are the sole company that you are dealing with than if they feel you are shopping the risk and taking it around to several companies.

Q. How many brokers are usually trying to land a risk in a case of that kind, each one trying to work out the best program for an assured?

A. Of course, the broker that has a nation-wide risk on his books must expect many brokers to walk into the assured during the course of a year and attempt to take it away from him.

Q. And he probably would go in with a program that he would think was better than yours and try to work out something to better satisfy the assured than what you were doing.

A. That is right.

Q. He would probably take his program to a different [fol. 1277] company from the one you were working with?

A. Oh, yes, of course.

Q. So that the net result of this practice of one broker taking his business to one company and another broker taking the same risk to another company, and so on, and a number doing the same thing, really has the effect of these insurance companies competing so as to try to make you a price on the policy or the risk which will be less probably than the one some other company makes another broker; isn't that true?

A. Yes, that is true.

Q. Is it customary for an insurance company just to quote a flat price that they would charge for one of these blanket risks covering different lines probably and also different plants in different States, or do they quote a separate rate on each plant?

A. Oh, no, they quote a price for the assured's entire operations throughout the country on a particular line of insurance.

Q. Have you had any experience in trying to secure a good price where, in order to secure that, you have to take a smaller commission than you might take in other cases where you are placing a similar risk? In other words,

would the company, by reason of paying a smaller amount of commissions in a case, give a better price than if they paid the full commissions?

A. Oh, yes, that is done.

Q. Do you draw any distinction when you approach these insurance companies between a company that is a member of a Bureau and a company that is not a member of a Bureau?

A. We deal with both Bureau and non-Bureau companies.

[fol. 1278] Q. So that the Bureau companies are really in competition for this business with the non-Bureau companies, are they not?

A. That is right.

Q. And they have to meet in that competition such prices or premium charges as the non-Bureau companies may see fit to charge in one of these large complicated policies?

A. That is right.

Q. Did you take into consideration the question of whether or not the company was a member of the Association of Casualty and Surety Executives?

A. We do business with both members and non-members.

Q. That wouldn't make any difference?

A. No.

Q. Would it make any difference whether the company was a member of the Acquisition Cost Conference?

A. No, not a bit.

Q. What is the custom in New York State as to fire insurance policies where the risk is located outside of New York City, say, up around Albany and you are negotiating that risk, as to the participation of the local agent in the commissions?

A. We know nothing about that. We place a risk here in New York City with the New York office of a fire insurance company and we get the policy from the company. That company may have it countersigned by a local agent in Albany or just put his name on the policy and send him a countersignature fee. We don't know. We don't deal with the agent at all.

[fol. 1279] Q. You see the policies, don't you?

A. Yes, we see the policies.

Q. Are they countersigned by local commission agents or not?

A. Sometimes they are and sometimes they are not but whatever fee they get they get from the company.

Q. You spoke of the local agent who countersigns a policy and what he might know about the risk or should know about the risk. If you were responsible for countersigning and issuing a policy, wouldn't you feel like he would let you know something about it?

A. I have never been in that position but, from my talks with agents, I believe that they regard the countersignature fee as just a form of gravy and I do know this as a fact that in the old days, when a special agent of an insurance company went out to appoint an agent in a local community to represent his company, he would ask the agent how much business he could be expected to develop for the company, whereas today it is not unusual at all but it might almost be said to be the practice for a local agent, when he is appointed by the company, to ask the company how much business he might expect to receive from them for countersignature.

Q. And that is the custom around the country generally, is it?

A. It is getting to be the custom.

Q. That these local agents feel that they are entitled to that business?

A. No, I don't think they feel they are entitled to it. They want to get it. It is a form of gravy.

Q. It is part of the compensation for the work that [fol. 1280] they do in representing the company, isn't it?

A. I don't think for a minute that they feel they are doing any work in signing the policy.

Q. It depends largely on what the agent thinks about it and whether he wants to investigate the matter and find out whether he thinks it is in such shape as he should sign it, doesn't he?

A. If it is his duty to investigate the risk, then he certainly would be entitled to a fee from the insurance company and I don't doubt for a minute but what the insurance company would be very happy to pay such a fee, but when he receives a fee merely for countersigning the policy, that is nothing more or less than just gravy.

Q. Of course, the mere work of countersigning a policy is just a clerical act, worth practically nothing, isn't it?

A. Absolutely.

Q. And if that is all an agent does I agree with you he is not entitled to be paid anything, that he should do that as a matter of accommodation if he represents a company,

but where the agent feels a responsibility in the matter when he countersigns a policy and feels he should not countersign it without informing himself about the risk and whether the policy is correctly prepared and adequately covers the risk, you would have a different situation, would you not?

A. To my mind, it is not a question of whether the agent himself feels the responsibility. It is a question of whether he has to do so.

Q. He has to sign it, hasn't he?

A. The act of signing, as you have just stated, amounts [fol. 1281] to nothing. If there is any other service that he is to perform, then he performs it either at the request of the insurance company, or at the request of the original producer on the risk, assuming that the agent is not the original producer.

Q. It depends on what significance attaches to his signature, doesn't it?

A. It depends upon his instructions.

Q. If the law requires him to countersign it, he is entitled to place his own construction on what his responsibility is in the matter, isn't he?

A. I don't know.

Q. And your testimony along this line is predicated upon your belief and your attitude that when a countersigning agent countersigns a policy he doesn't feel any responsibility at all in the matter; is that true?

A. No, I would say that my attitude in this matter as a broker has to do with my firm belief that the agent can be of absolutely no service to me when he countersigns a policy.

Q. You say you would view with alarm and disfavor a local agent undertaking to service a risk in Virginia. Why is that? Would you feel that his action is hostile to you in trying to get the business away from you, or something of that kind?

A. That is one phase of it. Of course, the agents in Virginia are constantly trying to take our business away from us in this State. So that is a very real factor, but another very real factor is this, that he might well handle a claim in a manner such as to prejudice the rights of the assured [fol. 1282] under the policy and thereby prevent the claim from being paid and enable the insurance company to deny liability which, of course, would be very unfortunate.

Q. You might do that too, might you not?

A. Yes, but that is our responsibility, it is our business, and if we do such a thing we suffer the consequences.

Q. If it is partly his responsibility he suffers the consequences also, doesn't he?

A. This isn't his responsibility.

Q. That is where there is some difference of opinion in this case?

A. I don't think there can be any difference of opinion. I don't see how there can be any difference of opinion just as I don't feel there is any difference of opinion on business that is written and serviced by the agents of Virginia.

Q. The Virginia Association of Insurance Agents has taken an entirely different view of the situation as to their responsibility in the matter, and have adopted a resolution to the effect that they should contact the assured and familiarize themselves with the risk and feel responsible for the policy when issued and should honor and respect the rights of the non-resident broker who negotiated the contract.

A. Well, I think that would be a very dangerous precedent and I feel certain that the Virginia agent, for example, who handles the insurance for the Richmond Life Insurance Company, or any other life insurance company domiciled in Virginia, would not want a New York agent to contact the assured on his own risk. I feel very confident of that. [fol. 1283] Q. You are talking about life insurance?

A. The Richmond Life Insurance Company, assuming that the Richmond Life Insurance Company does business in New York State, I feel sure that the Richmond agent who handles that business would not want a New York State agent to contact the assured and participate in discussions, and so forth.

Q. Naturally, no agent would want somebody else to get part of his commissions?

A. I am talking from the standpoint of service to the assured. I don't think he would want him interfering with the conduct of the business at all. If he did I don't think he is best serving the interests of the assured.

Q. This law doesn't apply to life insurance?

A. No, I am talking about life insurance companies, their own business, like fidelity bonds, for example, and public liability insurance. After all, a life insurance company needs insurance just the same way other assureds do. They

carry fidelity bonds on their employees and they have public liability on their branch offices.

Q. Would you think that a risk on a Virginia plant of one of these large national corporations, which is an independent operation of the company that owned it, would have any relation to a risk on *an* another similar plant of that company located in another State, insofar as the insurance is concerned or the rates which should be paid?

A. Yes, absolutely.

Q. What relation would it have?

[fol. 1284] A. It is all treated as one risk. That is the practice in insurance, to treat all units of a nation-wide concern as a single risk.

Q. So that when an insurance company would figure on the Virginia risk, they would either burden it with a bad experience suffered in another State or give it the benefit of a good experience in a similar plant owned by the same assured in another State; is that true?

A. That is right.

Q. This information that you told Mr. Christian about getting from your assureds which is of a confidential nature, is that the same information that the insurance company, which is considering the risk, would require?

A. Sometimes it is and sometimes it isn't.

Q. What type of information would you need that an insurance company wouldn't need?

A. It isn't always a question of what we need so much as what they tell us—both.

Q. I am speaking of information that is relevant to the risk. I don't mean just general conversations you might carry on about something that hasn't anything to do with your insurance problem, but I am speaking about information relating to the particular problem which you may have outlined to a prospective assured. Is there any information that you would require in connection with that risk that the insurance company would not require?

A. I can't offhand think of any except that we do go into it a little bit more minutely sometimes than we have to go into it with the insurance company.

[fol. 1285] Redirect examination.

By Mr. Christian:

Q. On the other hand, Mr. Otis, am I right that you require information about various and sundry things in order

to determine what exposures exist and what coverages you want, whereas the insurance company is only concerned with the final product of your deliberations and study and with the coverages which you select from all the possible coverages to present to it for discussion?

A. That is true. That is what I tried to convey by my answer, that we go into it more minutely with the assured than we do with the insurance company.

JAMES A. BURBANK, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Please state your position and the location of your home and office?

A. I am the Superintendent of the Engineering and Inspection Division of the Travelers Insurance Company. My office is located at Hartford, Connecticut, and I reside at 69 Mohawk Drive, West Hartford, Connecticut.

Q. How long have you held this position?

A. Since December, 1934.

Q. Generally what are the duties of your position?

[fol. 1286] A. Managerial and administrative with respect to the engineering and inspection work on all lines written by the Travelers group of companies.

Q. What is your relationship to the witness Thomas A. Murphy in this case?

A. He is one of a great many supervising engineers who are located strategically throughout the country, upon whom rests the supervisory activities with respect to the local engineers and inspectors.

Q. Under whose authority do they work and to whom do they report?

A. They are responsible to me as head of the division in which they are employed. There is one intermediary between them and me with respect to certain of their functions, relating largely to personnel matters.

Q. I believe you told me yesterday that there were 385 engineers or inspectors in the field and 120 clerks in the field and a total of 60 personnel in the Home Office, making up your division; is that correct?

A. That is correct, within one or two persons.

Q. How much of the time of these engineers in the field is spent in making inspections?

A. Might I ask if you mean by inspections the time required from the time they leave their place of business until they return to that or get to another place of inspection?

Q. Yes.

A. In that case my answer to you is approximately five-eight-s of their time.

Q. How much of their time is spent in preparing for [fol. 1287] inspections, determining after physical inspection what recommendations to make, writing the reports, and conferring with agents and Branch Office personnel, including claim personnel?

A. Three-eight-s of their time, approximately.

Q. Please say what number of inspections was made by Mr. Murphy and his assistants in Virginia in 1938 in the various lines of insurance and in the aggregate?

A. In the territory serviced by Mr. Murphy and the men responsible to him, all of whom are domiciled in Virginia, during the year 1938, in compensation they made 1,491 inspections; on public liability, the classification which we use for manufacturers' and contractors' liability, 70; general liability, which might be interpreted as being and known as O. L. & T. business, 611 (O. L. & T. meaning Owners', Landlords' and Tenants' liability); elevators 1,735 inspections; theatres, 62; automobile garages, 35; auto fleets, 449; plate glass, 53; burglary, 53; boiler and pressure vessels, 2,309; machinery, 789; no line—(that is the classification in which we throw engineers' time in the field when they call on agents and that sort of thing) 163; fire, 135; marine, 9; a total of 7,964 inspections.

Q. Please say what classification exists of your automobile liability locations and cars in Virginia under the supervision of Mr. Murphy or the Home Office?

A. I have a record which shows for the same territory six fleet locations involving 381 cars, the service on which fleets is handled under the direction of the Travelers Engineering and Inspection Division, Home Office Staff.

[fol. 1288] Q. Does Mr. Murphy, and his staff, conduct those inspections or do you have other people do it?

A. Mr. Murphy and his staff conduct those inspections and report directly to the Home Office on them.

Q. Give the others, please?

A. The other serviced fleets in Virginia total 162, involving 1,620 cars.

Q. When you speak of locations do you mean separate garaging points for units of the same fleet or separate fleets or sometimes one and sometimes the other?

A. Sometimes one and sometimes the other but mostly they are garage locations.

Q. How much of the automobile premiums of the Travelers are represented by fleet premiums?

A. Country-wide fleet premiums represent approximately 15½ percent of the automobile premiums.

Q. You don't have that figure for Virginia coverage, do you?

A. I do not.

Q. How much of the total country-wide automobile premiums are represented by garage premiums?

A. Four percent.

Q. You don't have that figure for Virginia either?

A. I do not.

Q. What are the number of elevators in the Virginia [fol. 1289] territory that are inspected quarterly?

A. I don't have that figure accumulated here. I have only a figure accumulated for all elevators that are inspected in the State of Virginia.

Q. How many are there?

A. 577 elevators. They average quarterly inspections.

Q. How many of these inspections are made before the company is on the risk by request of the agent or the Branch Office or the Home Office?

A. Country-wide we average 2500 applicant inspections per month.

Q. What is that in terms of percentage of total inspections?

A. Total inspections for 1938 were 435,500—very close to seven percent.

Q. How do these inspections vary in this regard: Are they all risks like power boilers or sawmill boilers or machinery risks on which the company will not go without previous inspections or are some of them that character and some of them of other characters?

A. Some of them are of one character and some of the other.

Q. What is the number of your miscellaneous public liability locations in Virginia?

A. 905.

Q. Do you know whether you have a mercantile chain store public liability risk covering in Virginia and produced outside of Virginia which is serviced by the company with 258 locations?

A. I do. We have a mercantile chain store assured which has 258 locations within the State of Virginia.

[fol. 1290] Q. Is that business produced outside of Virginia?

A. It was.

Q. Are these locations all in one or two cities or counties of Virginia, or are they broadcast over the State?

A. Scattered widely throughout the State.

Q. I believe you also have a mercantile chain store risk in Virginia that was produced outside of Virginia with 32 locations; is that correct?

A. That is correct.

Q. Are those locations scattered or all in one city?

A. They are not all in one city in the sense you have used it. They are scattered.

Q. That is a limited price type of chain store, isn't it?

A. Yes.

Q. How many objects are included among the classification of boiler and pressure vessels within Mr. Murphy's territory?

A. 1,148.

Q. How many machinery risks are in his territory?

A. 236.

Q. Suppose that the engineering department of a casualty company receives a communication from an agent, not the producer, asking for information about a risk or requesting the inspection of a risk, what course would the communication take under the practice of the companies?

A. I can speak only for the Travelers Insurance Company. If such a request would come to my personal attention I should refer it first to the agent or broker who has produced the line, requesting advice as to the disposition of such request.

[fol. 1291] Q. If I am an agent in Virginia and I ask for information about a risk from the Engineering Department or request an inspection and the Travelers is not already on that risk, then you would freely give me what I wanted, wouldn't you?

A. If we had the information in our possession we certainly would, but we would again refer that information to the broker through the local manager.

Q. In the case that I just assumed the Travelers is not on the risk but some other company has the risk. Would you refer that to the producer of the risk for that competing company or would you ignore him?

A. Certainly not.

Q. In a case where the risk is already being carried by your company, would you refer the communication to the true producer of it, notwithstanding that under the compulsion of some State law you knew at the time that you did this that the inquiring agent had received some substantial compensation because of his status as a countersigning agent?

A. We would certainly refer such requests to the producing agent or broker.

Q. After you refer it to the producer you would do nothing for the inquirer except to tell him you had gotten his letter and that you had referred it to the producer?

A. We would do nothing more than that.

[fol. 1292] Cross-examination.

By Mr. Staples:

Q. Mr. Burbank, how many inspectors do you have in Virginia?

A. My recollection is that there are seven all told.

Q. Does that include Mr. Murphy?

A. Including Mr. Murphy, I would say.

Q. What is a unit of inspection of a compensation risk?

A. Will you please define "unit of inspection" as you mean it?

Q. You said there were 1,491 inspections. Just what do you mean by an inspection?

A. An inspection as meant and recorded and reported to us means a visit to a location of an assured, made after the engineer has informed himself concerning information available in the files of his Branch Office about the risk with a view to determining the existing exposures at the location to possible accidental injuries. Such a survey, if you please, being made with the possession of the facts already mentioned in his mind, he may develop a knowledge of certain

conditions needing corrective action on the part of the assured.

Q. Do you know about the average amount of time consumed in one of these inspections of a Workmen's Compensation risk?

A. The average time for a compensation inspection country-wide is 1.8 hours out of the office, using time in the same sense that I defined it previously for inspections.

Q. In other words, it includes traveling time as well as [fol. 1293] actual inspection time?

A. That is right.

Q. Do you have any figures on actual inspection time average?

A. Yes, I can state from the figures before me that the average traveling time is 4/7 of an hour.

By Mr. Christian:

Q. May I ask whether these figures to which you referred relate to compensation risks or all inspections?

A. That figure which I just gave was compensation only.

By Mr. Staples:

Q. So that it would just be an average actual inspection time of a little bit over an hour, wouldn't it?

A. I have not made such computation as you have made and if that is mathematically correct I would subscribe to it.

Q. I haven't made it accurately, but subtract four-sevenths from eight-tenths and it shows very little left over. What would you call a fleet inspection?

A. In the first place, you must define "fleet". A fleet is a group of automobiles garaged together, as we use the term, and used in a common type of business, thus lending itself to group study and group instruction. An inspection of a fleet is usually made at a time when the majority of vehicles and drivers are at the garage location. A check-up of the vehicles with respect to their safety appliances is made at the time of the engineer's visit. Usually a discussion of facts which may have previously occurred takes [fol. 1294] place and constructive suggestions are made to the drivers for the development of safety and what we call defensive methods of operation of their vehicles.

Q. I believe you said you have about 577 elevators?

A. That is correct.

Q. And each elevator is supposed to be inspected quarterly?

A. I stated that they would average quarterly inspections. The reason, I might explain for your information, is that slow freight elevators, lifting perhaps two stories, represent a rather minor exposure and, where there is no statute governing, would be inspected perhaps only once a year, whereas passenger elevators, with a great exposure, are inspected monthly whether or not there is a statute requiring that.

Q. You say that you have 577 elevators. Is that the average throughout the year that you had in Virginia or just at one specific time?

A. That is the number of elevators we had on the books between the dates of November 15th and December 19, 1938, during which period these records were compiled from the field and forwarded to our Home Office.

Q. You don't know how closely that would reflect the average number you have throughout the year?

A. Yes, I do. There is very little change in the elevator coverage in the State of Virginia.

Q. You would then have substantially the same number during the entire year?

A. That is a fair assumption.

Q. If you had averaged a quarterly inspection of those [fol. 1295] 577 elevators, as I calculate it, you would have made 2,108 inspections, whereas I believe you said you made 1,735; isn't that true?

A. I don't recall making a statement as to the number of inspections we made on elevators. Yes, you are correct—1,735.

Q. Have you ever gotten any requests from a countersigning agent, who was not a producer, to render any service in your Engineering Department?

A. I have no personal information of any such requests. May I ask this question of you, sir? Rather than have a discrepancy of statement on inspections, may I submit that the actual number of inspections made is correct and that the other is a general statement which is intended only for our general guidance.

Q. You mean your elevator inspections?

A. Yes, because if inspections happen to fall due in January, sometimes they are made in December ahead of time

and sometimes they are made late and the tabulation department keeps its records actually on an inspected basis.

Q. But there would still have been four inspections each year on each elevator regardless of the particular time of year, wouldn't there?

A. No, that would vary from year to year depending on whether we picked them up in locations where the man was not immediately available.

Q. The average would be the same, wouldn't it?

A. We are talking about a point that I am merely discussing with you for the purpose of not being put in position of being discredited on a statement where we have facts in one case and a generalization in the other.

[fol. 1296] Q. I understood that you were just giving an estimate. You stated the average was about quarterly and I was calling your attention to the fact that they hadn't averaged that in Virginia. Coming back to the question you answered a moment ago, that you had never received any requests from a countersigning agent, who was not the producer, to render any engineering service, is it not true that the statement you made as to the practice in case such a situation did arise is purely theoretical and not based on any actual experience because you haven't had any such?

A. May I answer this question in this way, that the procedure of the Engineering and Inspection Division of the Travelers Insurance Company is so well defined that should any such request as you have mentioned arise it would be brought to the attention of someone in supervisory authority above the local supervisory engineer because of its unusual nature and because of its breaking a standard routine which exists.

Q. I understand that, but you never have had any actual experience along the line of a countersigning agent making any such request?

A. None has been brought to my attention. I merely pointed out that if such did arise it would be such an unusual procedure that it would probably get to me and certainly get to one of my assistants for consideration. In other words, he would not of his own initiative feel that he had authority to take any action on such a request.

Q. If a practice of that kind should develop in Virginia I suppose your company would take it up and give proper consideration to all of the various angles of the matter

and reach a determination as to what might be deemed proper practice, wouldn't it?

[fol. 1297] A. That is a hypothetical question which, to my way of thinking, is most unlikely to develop, if I may say so. Before it would become a practice it would call for most serious deliberation on the part of myself and my superiors in the Home Office before it could be built into our organization as a practice because it is so unbusinesslike from our point of view of operating.

Q. You never have had any situation of that kind to deal with at all, have you, under the past practices of your business?

A. No, we have not.

Q. And as to how you might deal with that situation you are not able to say until it arises and you have given the matter proper thought and consider all of the different angles, are you?

A. Only insofar as I can draw upon my business experience as a practical business man and as administrator of this division, and I make the statement that I have already made that such an unbusinesslike procedure would certainly call for serious deliberation and consideration.

Q. You would give it that deliberation and consideration?

A. Most assuredly.

Q. Your company does endeavor to make its practices conform to the general laws and conditions in the various states, does it not?

A. We always cooperate with the authorities and pride ourselves in our pleasant relations with them throughout the country.

[fol. 1298] THOMAS F. TARBELL, a witness on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you kindly state your position and the location of your office and residence?

A. I am Actuary, Casualty Actuarial Department, Travelers Insurance Company, at its Home Office in Hartford, Connecticut; also Actuary of the Travelers Indemnity Company.

Q. How long have you held this position?

A. Since May 1, 1937.

Q. Before that I believe you were in a similar position for five years with the Aetna Company and before that for three years Actuary for the Connecticut Insurance Department and prior to that you worked in New York for eight years for the Mutual Life of New York. Is that correct?

A. That is correct.

Q. Do you have available a table showing the 1938 premiums on the casualty business of your companies covering in Virginia as a total and the parts of it?

A. Yes.

Q. And the parts of the premiums in the various lines?

A. Yes.

Q. Will you please file that with the reporter, marking it "Plaintiffs' Exhibit 39". I notice from this table it has 11,720 automobile liability policies but you also have in there 11,635 automobile property damage policies and 983 automobile collision policies. What is the aggregate of separate contracts involving these three separate classifications?

A. 11,720.

PLAINTIFFS' EXHIBIT 39

The Travelers Insurance Co. (Casualty Dept.) and the Travelers Indemnity Co.

Calendar Year 1938

State of Virginia

Line of Business	Policies Written(1) (Number)	Premiums Written (Amount)	Average Premium	Accidents Reported (Number)	Accident Frequency(2)	Claims Paid (Number)	Claim Frequency(2)
Auto Liability	11,720	421,283	36			455	3.9
Liability Other than Auto	1,716	108,378	63			241	14.0
Workmen's Compensation	805	314,922	391			Indemnity 661	82.1
						Medical 3,141	390.2
Plate Glass	598	16,535	28	Not Available	Not Available	212	35.5
Burglary and Theft	1,635	47,354	29			101	6.2
Steam Boiler	180	20,808	116			10	5.6
Machinery	10	12,918	1,292			8	80.0
	(16,664)						
Auto Property Damage	11,635	110,454	9			1,697	14.6
Auto Collision	983	18,560	19			66	6.7
Property Damage & Collision Other Than Auto	224	10,378	46			25	11.2
		1,081,590	65			6,617	39.7

(1) For Automobile—The number of policies involving the coverages under "Line of Business." For Property Damage and Collision other than Auto—the number of Liability other than Auto policies involving Property Damage and Collision coverage (each coverage computed separately).

(2) Frequencies are per 100 policies.

Average Automobile Premium 47.00

Average Liability, Property Damage and Collision Premium 69.00

Automobile Claim Frequency—All Coverages 18.9

Liability, Property Damage and Collision Claim Frequency 15.5

[fol. 1299] Q. What is the average premium on these 11,720 contracts?

A. $47—the nearest dollar.

Q. You have 1716 policies of liability other than automobile and 224 policies which are property damage and collision other than automobile. What is the total number of these policies?

A. 1,716.

Q. What is the average premium?

A. $69.

Q. Having reference to the total number of contracts shown in the table, would I be correct in saying that the total number is 16,664?

A. That is the total number of separate policies.

Q. What is the average premium on these 16,664 contracts?

A. $65.00.

Q. How many claims were made on these 16,664 contracts in the year 1938?

A. The number of claims paid in the year 1938 in the State of Virginia was 6,617.

Q. You have worked that out as a number per 100 separate contracts, I believe, and I will ask you to state it?

A. The number of claims paid per 100 separate contracts is 39.7.

Q. On these 11,720 automobile contracts, please say what was the total of 1938 claims in number paid?

[fol. 1300] A. 2,218.

Q. How many is that per 100 contracts?

A. That is 18.9.

Q. Please state the number of claims paid in 1938 on these 1,726 contracts of liability, other than automobile, and property damage and collision, other than automobile?

A. 265.

Q. And how many is that per 100 contracts?

A. 15.5.

Q. I notice under the column "Accidents reported" in Exhibit 39 and under the column "Accident Frequency" you have the words "not available." Does that mean that you do not have Virginia figures to go under these columns in 1938?

A. It means this, that the basic data from which that information could be compiled is available but it has not been

compiled. It is not available to me at the present time from any of the completed records that I have.

Q. Will you introduce a table similar to this Virginia table covering the whole territory of your companies for the calendar year 1938, but with the matter which should properly go under the two columns as to which Virginia data was not available inserted in the proper columns?

A. Yes, sir.

(This paper was filed and marked "Plaintiffs' Exhibit No. 40.-)

[fol. 1300-A]

PLAINTIFFS' EXHIBIT 40

The Travelers Insurance Co. (Casualty Dept.) and the Travelers Indemnity Co.

Calendar Year 1938

Total Business

Line of Business	Policies Written(1) (Number)	Premiums Written (Amount)	Average Premium	Accidents Reported (Number)	Accident Frequency(2)		Claims Paid (Number)	Claim Frequency(2)
Auto Liability	375,645	17,076,632	45	21,663	5.8		21,292	5.7
Liability Other than Auto	139,535	8,228,494	59	46,677	33.5		16,622	11.9
Workmen's Compensation	63,327	20,452,556	323	154,072	243.3	Indemnity	25,528	40.3
						Medical	128,049	202.2
Plate Glass	29,127	659,185	23	11,374	39.0		10,949	37.6
Burglary & Theft	76,120	2,219,897	29	5,006	6.6		4,120	5.4
Steam Boiler	7,856	1,194,697	152	685	8.7		396	5.0
Machinery	291	251,072	863	143	49.1		116	39.9
	(689,901)							
Auto Property Damage	356,767	4,591,461	13	106,211	29.8		57,768	16.2
Auto Collision	21,123	542,606	26	2,590	12.3		2,156	10.2
Property Damage & Collision Other Than Auto	11,372	542,997	48	4,070	35.8		2,505	22.0
		55,759,597	81	352,491	51.1		269,501	39.1

(1) For Automobile—The number of policies involving the coverages under "Line of Business."
For Property Damage and Collision other than Auto—the number of Liability other than Auto policies involving Property Damage and Collision coverage (each coverage computed separately).

(2) Frequencies are per 100 policies.

			Accident	Claim
Average Automobile Premium	59.00	Automobile Frequency—All Coverages	34.9	21.7
Average Liability, Property Damage and Collision Premium	63.00	Liability, Property Damage and Collision Frequency	36.4	13.7

[fol. 1301] Q. I notice you have in this table 375,645 automobile liability policies, 356,767 automobile property damage policies and 21,123 automobile collision policies. Am I right that that represents the net number of only 375,645 separate contracts?

A. Separate policies. That is correct.

Q. Similarly, are these figures of 139,535 and 11,372 opposite liability other than auto and also opposite property damage and collision other than auto to be combined into a net aggregate of only 139,535 contracts?

A. Yes, they represent 139,535 contracts.

Q. What is the average premium on the 375,645 automobile contracts?

A. $59.00.

Q. And the average premium on the 139,535 liability other than auto contracts?

A. $63.00.

Q. Have you computed the total number of separate contracts shown on Exhibit 40 after making the subtraction indicated as proper; if so, please state the total number?

A. Yes, the number is 689,901.

Q. What was the average premium on this number of net separate contracts?

A. $81.00.

Q. Please state the total 1938 paid claims on these 689,901 contracts?

A. The number of claims paid on the total business in 1938 was 269,501.

Q. And what was that per 100 separate contracts?

A. 39.1.

Q. Referring to the accidents reported on these 689,901 [fol. 1302] contracts, what was the total number of accidents reported?

A. The total number of accidents reported in 1938 was 352,491.

Q. What accident frequency does that represent per 100 contracts?

A. 51.1.

Q. Having reference to these 375,645 automobile contracts, what were the claims paid in number?

A. 81,216 is the number of automobile claims paid in 1938.

Q. How many is that per 100 contracts?

A. 21.7.

Q. As to the accidents reported on these 375,645 contracts, what was the total number?

A. The number of automobile accidents reported in 1938 was 130,464.

Q. And what was the accident frequency on those contracts?

A. 34.9 per 100.

Q. Speaking about these 139,535 liability and property damage collision policies other than auto, please state the number of claims paid?

A. The number of claims paid was 18,127, representing a claim frequency of 13.7 per 100. I speak of paid claims.

Q. Please state the number of accidents reported under these 139,535 policies and the accident frequency per 100 separate contracts?

A. The number of accidents reported was 50,747 and the accident frequency per 100 policies was 36.4.

Q. Please state the average duration of the contracts in each of these separate lines and also the mean average duration of the entire group of 689,901 contracts?

[fol. 1303] A. We compute the average durations by line as follows:

	Years
Automobile liability	1
Other liability	1.69
Compensation	1.02
Plate glass	1.49
Burglary	1.32
Steam boiler	2.57
Machinery	2.77
Auto property damage	1
Auto collision	1
Other property damage and collision	1.45

For the 689,901 policies we compute the average duration as about 14½ months.

Cross-examination.

By Mr. Staples:

Q. Do those averages of duration which you have just referred to take into account renewals or not?

A. Those are both new business and renewal policies.

Q. You say that an automobile liability policy averages one year. What do you mean by that? Is that the time that a policy is taken out for, just for one year?

A. That is right, and I might add that in this record every policy that is written for less than the year is counted as a year because we do not separate the policies into any unit [fol. 1304] less than a year. A short term policy, written for six months, would be counted for one year which, of course, would tend to have these figures slightly overstate the average duration.

Q. Those average figures that you have given are not intended to convey the idea that that is the length of time that you would have a contract with the assured on that particular coverage, is it?

A. Not the period of time that we might cover an assured. It is the period of time that the individual contract is in force.

Q. That wouldn't have any bearing at all then on the average time that you might have the coverage of your various assureds? In other words, a man might renew the contract ten times.

A. It would have no bearing on that point at all.

Q. Do you have figures showing the average amount that you paid out on each of these 6,617 claims in Virginia?

A. The average amount I have available but it has not been computed. I have the figures here and it would mean adding up some figures.

Q. The total number of automobile property damage policies for the year 1938 issued by your company on Virginia coverage was what number?

A. 11,635.

Q. What was the total amount paid out in claims on those policies?

A. The total amount paid out for automobile property damage claims was $58,435.

Q. That is an average of a little over $5 a policy, isn't it?

A. Yes, that is right.

Q. In your Exhibit No. 39 you show automobile liability policies written 11,720. Does that mean that there are that [fol. 1305] many automobiles covered or that there might be more automobiles covered than that?

A. There unquestionably are more automobiles covered because we count a policy only as one regardless of the number of automobiles that may be covered under the policy.

Q. It might cover a whole fleet and you would still count that as one policy?

A. That is correct.

Q. Your exhibit then does not contain information from which you can estimate the number of claims paid in proportion to the number of cars covered, does it?

A. It does not.

Redirect examination.

By Mr. Christian:

Q. Having reference to plaintiffs' Exhibit 39 and the 11,635 automobile property damage contracts, is my understanding correct that that classification is merely a coverage clause in that number of the 11,720 contracts classified as automobile liability?

A. Yes.

Q. Am I also correct in my understanding that an automobile property damage claim arises under such a coverage clause, in 1938, 14.6 times out of each 100 contracts?

A. That is correct.

Q. Would it be fair to say that that is about once in seven years of that protection that a claim of that sort arises under such a coverage policy?

[fol. 1306] A. Yes.

Q. Please give the amounts of dollars paid out on account of the various classifications of claims mentioned in the table in Exhibit 39 other than the amount which you have said was paid out in connection with the 1,697 automobile property damage claims, to the extent that you are able to do so?

A. You mentioned $59,434.68.

Q. I understood you to say that was the total paid out on those 1,697 property damage claims?

A. That is correct.

Q. I want you to do the same, if you are able to do it, with respect to each of the various lines shown on the table?

A. I will read them in order. This is the amount paid in claims in 1938 in the state of Virginia:

Automobile liability	$172,499
Liability other than automobile	44,757
Workmen's Compensation	146,270
Plate Glass	7,671
Burglary	8,853
Steam Boiler	2,341
Machinery	1,678
Automobile collision	11,268
Property damage and collision, other than auto	590

Q. In reference to that figure of $58,435, is it $5 per policy or $5 per claim?

A. The $5 refers to an average of $5 per policy, not per claim.

Q. And the average claim would be the product of dividing the $58,435 by 1,697 claims or what, if you have done that?

A. That is an average per claim of $34.

[fol. 1307] M. A. GESNER, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. State your name and occupation?

A. M. A. Gesner; I am Vice-President and Director of the H. W. Schaefer Company, 39 Broadway, New York City. I might mention Mr. Schaefer is the President of the National Association of Insurance Brokers. My particular duty is in handling the casualty department of that office.

Q. How long have you been connected with the Schaefer Company?

A. Three years.

Q. How old is that firm?

A. It will be twenty-nine years this May.

Q. They have been doing business all that time right here in the same town?

A. Yes, sir.

Q. Where were you connected before you came with this firm and in what capacity?

A. I was assistant manager of the United States Fidelity & Guaranty Company, New York office, in charge of all of the casualty departments for five years prior to that and for eleven years prior to that I was Assistant to the Manager of the Compensation and Liability Department of the National Bureau of Casualty & Surety Underwriters, working principally at the New York office but also at various branch offices doing inspection and rating work.

[fol. 1308] Q. Will you please indicate on the record the number of partners or part owners of your firm and the number of personnel connected with it which you would not include in the characterization of partners or part owners?

A. Our firm is a corporation and it has a president and three vice-presidents, treasurer and secretary and assistant secretary. I believe all of the officers hold stock in the corporation, Mr. Schaefer, of course, being the principal stockholder. The other personnel consists of the clerical force, secretaries, stenographers, office help, file clerks, telephone operators, and our total force, I believe, is eighteen at the present time.

Q. Does that constitute an exhaustive enumeration of your force or do you have any department heads that wouldn't be called clerical people strictly, or engineers or inspectors?

A. Each department has at its head an officer of the company.

Q. Do you have any technical assistance aside from that furnished by the officers?

A. No, we do not.

Q. Without prying too much into your affairs, to the extent that you feel at liberty to speak of your volume of premium production, I would be glad to have that on the record?

A. We prefer not to give any actual figures but I would be willing to say that over the past fifteen years our premium volume has average- in excess of a million dollars a year.

Q. Will you say your firm is a large one or a small one as [fol. 1309] such firms go in New York and its environments?

A. I suppose we would be classed as a fairly large office. We are by no means as large as many of the brokerage offices but we are larger than a good many of the brokers in New York City.

[fol. 1310] Q. Will you please approximate the distribution of your premiums in percentages?

A. I would say that our casualty business is approximately fifty percent of our total and I would have to make quite a rough guess on the other lines. I would say it is probably divided more or less equally, the balance between marine, fire, fidelity and surety, and life and accident.

Q. In the casualty and fidelity and surety lines do you limit yourselves to particular coverages from particular exposures or do you attempt to provide for your clients all needed coverages against all exposures.

A. All exposures. We don't restrict ourselves or specialize in any particular form of insurance.

Q. In what states other than New York do these contracts cover?

A. Is it permissible for me to look at a list that I jotted down at lunch? It is not complete but, at least, it is accurate as to those states that I will name: Missouri, District of Columbia, Florida, Georgia, Pennsylvania, Delaware, Maryland, Illinois, Indiana, Alabama, Michigan, Minnesota, Ohio, Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut, New Jersey, California, Texas, Wisconsin, Mississippi, Louisiana. We also handle foreign coverages in the Bahama Islands and South America. That is an accurate list; that is, we have business at the present time in those states. How many more states I wouldn't know without going through our records and I haven't done that. We also have risks which operate fleets of cars through many states.

Q. You mean many not in that list?

A. Yes, many not in that list.

Q. Could you make a statement of your impression as to the part of your business that covers outside of the metro- [fol. 1311] politan area in premium volume and the part that covers inside of the metropoliton area?

A. I can say with certainty that more than fifty percent is outside of the metropolitan area. How much more, I don't know.

Q. I want to get an idea of whether in these multiple locations, scattered among the states, the risks that are produced around here and cover elsewhere are usually experience rated or equity rated or whether they are usually rated by manual. I know there are some closed states and some open states.

A. In practically all cases they are subject to either experience or equity rating, some form of special rating other than manual rates.

Q. I believe there are a good many states that permit the retrospective plan and a good many that do not, aren't there?

A. Yes, there are.

Q. Could you say some of the lines of business in which these various assureds are engaged?

A. We have a good many contractors on construction work of all classes, we have railroads, manufacturing, structural steel plants, mercantile department stores and it is a general class. There isn't any one type that we specialize in.

Q. Do you usually place your business with a branch office or general agency?

A. With most of the companies that we do business we are doing business through branch offices. There are one or two important exceptions to that. We deal with a large number of companies.

Q. You don't have any particular preferences among the companies?

A. I wouldn't say we have preferences but our custom [fol. 1312] would be to concentrate the insurance of one risk, as far as possible, in the same company and there are certain risks which we consider one company better than another to handle and service.

Q. I could imagine that the particular company having a large number of risks of a certain type in its claim and inspection personnel would become better equipped through experience, to handle additional risks of that type? Would that be so?

A. That is very true. I can give you instances if you are interested.

Q. Would it also be fair to say that you acquire a familiarity as to what you might call underwriting peculiarities of the various companies so that you are able at times to think that certain risks will receive a warmer reception and more favorable reception from the underwriting department of one company than they might from the underwriting department of another company?

A. Yes, we do. We know in actual practice that certain underwriters believe that certain types of risks are desirable, whereas underwriters of other companies try to avoid assuming liability for those risks and we naturally go to the underwriter who thinks that is a good class of business because he will be more patient and lenient in the handling of the risk than an underwriter who didn't want it in the first place.

Q. Am I right that you acquire that knowledge by long association with these fellows and dealings with them and hearing them talk?

A. That is true.

Q. When you were in this position with the branch office in New York of the U. S. F. & G. were you constantly being brought in touch with producers and general agents and company officers so as to acquire reasonably intimate knowledge of those people?

[fol. 1313] A. Yes. In my position it was necessary to deal with the brokers and agents in the territory serviced by that office and I naturally learned from those brokers that certain companies wouldn't write a certain class of business, which I might think was a good class of business, and be willing to write. I would also learn of other companies that would write lines that I call undesirable and wouldn't write and we naturally have committee meetings of company underwriters and the state rating boards and bureaus where you learn the views of other company men.

Q. Has it been your experience that when you attempt to make a survey of the exposures of an assured, the insurance manager of that insured or its treasurer, or whoever may have to do with its insurance affairs, will let any Tom, Dick or Harry who comes along have the knowledge to make an effective survey?

A. It is very difficult to get that information until you either have been presented by an executive of the firm or in some other manner have won the confidence of the insurance manager.

Q. When you submit a program, after such a survey, do you indicate in the proposal the companies in which you plan to place the various kinds of coverages that make up the program or do you leave that to be settled later when the program in general is approved?

A. We do not name the companies.

Q. Do you go out and make certain you can get the coverages which you are going to propose in the program and at the price that you propose before you submit the program?

A. If there is any doubt in our mind as to our ability to carry out that program, we would then sound out companies to make sure that we could carry it out. In most instances it would not be necessary to discuss those matters with the [fol. 1314] companies first because we have sufficient knowledge of the business to know what can be done in the market.

Q. Then when the assured accepts your program does he ordinarily specify the companies to be selected?

A. It isn't either one of the two. If our program were otherwise acceptable, we would be asked the names of the companies that we proposed to use, and we would have to satisfy the assured that those companies were capable of handling it and their financial standing and organization were adequate to render all facilities necessary.

Q. Do you find as rule that your recommendation of the company is accepted?

A. In practically all cases our suggestion is accepted but there are certain exceptions to that where, for other business reasons, an assured will want to have a particular company favored if he can do it without having it cost him more money.

Q. Some of the witnesses said, I believe, that financial institutions like banks often want to distribute their business among their depositors in some relation to the balances that are carried with them and some one else said that contractors, even though they were changing their broker or producer, might want to suggest to the new men keeping the same company that they have been getting their bonds from before. You concur with those two statements?

A. That is very true.

Q. They are examples of unusual instances that you refer to?

A. That is right. As another example, contractors are frequently given work to do by insurance companies, either to put up buildings for companies or to take over unfinished contracts where another contractor has defaulted under his [fol. 1315] bond. That insurance company favors a particular contractor with the completion of the work and it frequently happens that the contractor will want to reciprocate and give his business to that company.

Q. It seems to be a general notion, intimated, I might say, by counsel at times in this case, that all fleet risks have got to have a domicile in particular states or localities. In your experience has that been true or are they, in some cases, like little bugs running around the country?

A. Of course, they all have a domicile but not necessarily in every state that they operate in.

Q. You mentioned to me the other day a risk you had country-wide for a confectionery distributor of a specialty that had cars going through Virginia. Do those cars have their principal use or principal garage in Virginia?

A. No, not at all.

Q. Where might they be from just as well?

A. They would be serviced from some principal city. In that particular risk there are half a dozen field offices where there are branch managers. He has charge of a large force of salesmen who service the state in which that office is located, and also surrounding states.

Q. And those cars then, even though they were operating, we will say, in North Carolina and Virginia and West Virginia most of their time, might have their principal garaging place and headquarters, when a salesman is back home with his wife and family, up in Baltimore; is that right?

A. That is possible.

Q. Do you ordinarily change the risk at renewal time or in the middle of the period from one company to another?

A. That does not happen very frequently with our office. When we place a line we have in mind keeping it with that [fol. 1316] company as long as we control that risk unless some unexpected development takes place such as a change in the underwriting policy or restriction in the company's facilities—some unusual event. It would be unusual to switch the business. We don't make a practice of that.

Q. When you do make a shift like that do you explain to the assured why you are doing it, as a rule, or just say nothing?

A. We explain it to the assured in the majority of cases.

Q. Suppose you had your risk with one of these good companies and everything is going along all right except that it served notice on you that hereafter you can only get half of the producer's commission because it has to give the other half of your commission to the countersigning agent in the coverage locality and, instead of digging down in its pocket to pay those fees in the localities, it wants to take them out of your pocket. Would you have any hesitancy in telling your assured that that has occurred and, for that reason, you want the company changed or would you freely disclose that that was so and that you want to change the company for that reason?

A. We wouldn't have any hesitancy in telling our customer why we wanted to transfer an account if it were for that reason.

Q. Would that be based on the theory that you would place it where there was the biggest commission or would there be any economic reason why you should not be content with half of the commission hitherto enjoyed?

A. It costs us more than half of our commission for our service organization. That is exclusive of the amount that we have to pay to our salesmen or producers, as we term them. So from a practical standpoint we wouldn't operate if we were reduced to half of our present commissions.

Q. So you think rather than it being a question of whether [fol. 1317] that is a proper thing for you to do, it would be more a question of your having to do it if you are going to stay in business?

A. It would be a necessity.

Q. In a case like that suppose your assured replied to you that his understanding was that in these localities in question these countersigning agents were going to take over a whole lot of your responsibility and what had hitherto been your duties and that before they countersigned those policies they were going to contact the assured and examine into his affairs and find out his exposures and that they were going to carefully check up those policies to see whether they were the proper and right kind of policies for that assured to have and after the policies were placed they were going to give the assured all the service you have been giving him through the life of the policy, and each of those countersigners was going to be kind of an additional insurance counsel to that assured in his particular locality? Would not that satisfy your misgivings about it and make you feel—"Well, if these fellows are going to do all that, I can avoid so much that I can get along on half of the commission"?

A. We wouldn't feel that way at all. In the first place, I don't believe any assured would put up that proposition to us because we were selected in the first instance because the assured felt that we had the type of organization that could give him the insurance service that he wants and, in the second place, we would not be willing to give up any part of our functions to any local agent. We don't believe they are capable of performing all the functions that we perform and we wouldn't give any part of them up. It would hinder our ability to render the type of service that we offer to our clients.

[fol. 1318] Q. Do you mean to be understood then as asserting to the Court that there is a special relationship of trust and confidence between your assured and your firm so that they wouldn't be equally content with the services of agents all over the country?

A. I certainly do.

Q. Do you mean to assert that you think your assureds would give you information which, if you were unfaithful to them and passed it on to their competitors, would be injurious to them and they would trust you to keep that private?

A. They do.

Q. And your point is that you don't think they would do that to all local agents in the country?

A. I feel sure that they wouldn't.

Q. What has been your experience with reference to the necessity of your going out into the field to these locations of coverage to get physical contact with conditions?

A. When we insure a risk, whether it is in our own locality or in another state, another section of the country, after we arrange the insurance and check the policy as to coverage, rates, premiums, and deliver that policy, we then have an arrangement with the companies whereby we receive copies of their inspection reports, we receive copies of all accident reports from the assured and we receive information from the claim department of the insurance company as to the progress of the handling of each claim, including reserves on cases that are not settled, and the amounts paid on cases that are settled. We keep a complete record on losses so that we are in a position to check the experience rating data on loss ratio. We also receive the original audits in all cases and, in many cases, the work sheet from which the auditor builds up his audit and we [fol. 1319] check those so that we can be in a position to determine whether the experience rating for the future is based on proper information. When a particularly excessive accident frequency is revealed and the cause for that is not brought out from the company's inspection reports or the loss reports, we investigate that ourselves by going to the scene of the operations, if that is necessary, to determine the cause of the trouble and to attempt to effect a cure. We have had to do that in numerous cases in states a good distance from New York, for instance, South Carolina, Florida, Indiana, Ohio. The only time when we associate ourselves with a local agent or broker in the distant city is when the officials of the assured who handle the insurance are located at some point not easily accessible to New York. For instance, we had a case come up in California a few months ago where the executives who would be handling the insurance would be located in California. We immediately negotiated with a California insurance broker who we knew maintained an organization and could handle that work out in California and made our own arrangements with him on the division of the commission.

That type of case is the only type where we ever feel it necessary to associate ourselves with anyone else.

Q. The witness Tabb in this case discussed on the record an Imperial Tobacco fleet risk where he had a general agent's commission paid to him and Marsh & McLennan had the producer's commission paid to them. That happens to be a company that has a beautiful and substantial building at Fifth and Franklin Streets in Richmond and its two chief American officers, as far as I know and believe (and perhaps more than that number) live in Richmond. Would that be an illustration of what you are talking about, that if you got that business like Marsh & McLennan did you might take some Richmond agent in as they have taken [fol. 1320] Tabb in to keep up that contact?

A. Yes, we would in such a case. Those cases are infrequent. Ordinarily insurance is placed in the city where the executives are located, whether it be Chicago or New York or San Francisco or Richmond.

Q. In the same way, I suppose if a brokerage firm carried the exposures of the Pennsylvania Railroad, with its large interest in the Norfolk & Western and the Norfolk & Western, because of that good recommendation of the firm by the Pennsylvania, would place its exposures with that New York or Philadelphia brokerage house, it might be reasonable for an agent in Roanoke, Virginia, to be associated in that, because of the principal office of the Norfolk & Western and its principal executives being there?

A. That might be, although our experience with railroads, in such a case, is that the principal railroad would determine the policy on insurance and would actually handle the placing of the insurance.

Q. What has been your experience in what happens when countersigning agents around the country learn about a concern's exposures or one or more of them being asked to countersign policies and they use the information thus gleaned as a vehicle for intelligent solicitation of their business, either for themselves to the exclusion of the producer, or under some kind of partnership arrangement that they are going to help the producer by carrying forward the joint interests of the producer and themselves. What course do such proposals of assistance or advice take as a rule, after they are made to the local plant manager of the assured?

A. I was going to say that that wouldn't happen frequently because in most cases the people who purchase and arrange for the insurance would not be located where the countersigning agent is.

[fol. 1321] Q. But he could go over to the factory superintendent and say, "Look here, your wife and mine belong to the same clubs and play bridge together and you and I are good friends and you have become a permanent resident of Richmond, and I want to have some of your business," and suppose the plant manager said to him, "I don't handle the insurance business," might not he still say, "I saw the other day a policy covering some of your exposures here and I didn't think much of it," and point out mistakes in it and try to interest that man to give him some of it?

A. If that happened the local plant manager of the assured would take it up with the head office, or whatever office had the handling of the insurance, and bring out any so-called deficiencies in the contracts or suggest that a local agent be given a part of the business or all of it.

Q. And then what would a man up here do with it when he got that communication, as a rule?

A. He would normally discuss it with his insurance manager or advisor, whether that be a broker or an agent.

Q. Would it be your idea in a case like that that he would do like he would with a lawyer, either follow that producer's advice or get another producer, or would he go on and do what he wanted to and keep his relationship with the producer?

A. In our experience in such a case the assured would either follow the advice of his present insurance advisor or get another insurance advisor. When I say "insurance advisor," I mean either a broker or an agent because the business isn't necessarily placed through brokers.

Q. What is the official designation, as a rule, of the assured's officer or employee who determines its insurance policies or carries out the policies determined by the Board of Directors?

[fol. 1322] A. I would say ordinarily he is the insurance manager. He may be the comptroller or treasurer or assistant treasurer.

Cross-examination.

By Mr. Staples:

Q. Mr. Gesner, are you a member of the National Association of Insurance Brokers?

A. I will have to explain that. The National Association of Insurance Brokers is not an individual membership. It is comprised of local brokerage associations all over the United States. In other words, the Insurance Brokers Association of New York takes membership in the National Association of Insurance Brokers. The California Society of Insurance Brokers takes membership in the National Association. It is not an individual association.

Q. How many individual associations are there in it?

A. I would have to guess. There are three or four associations here in the metropolitan area that belong to the National Association. I know there is one in Boston, one in Chicago, at least one in California, one in St. Louis and one in Philadelphia. Whether that is a complete list, I don't know. Normally we brokers are only in the larger cities like New York, Philadelphia, Chicago, San Francisco and Boston.

Q. What was the nature of your duties with the National Bureau of Casualty & Surety Underwriters?

A. They varied over that eleven years. I started in the inspection and engineering division and learned how to inspect manufacturing plants, apply the industrial compensation schedule rating plan and to determine the proper classification of such risks. Later on I was in the rating [fol. 1323] department, determining the schedule adjusted rates from the inspectors' reports by applying various formulas in that schedule rating plan and in the experience rating of risks, both interstate and intrastate. I worked in the Chicago branch doing rating work, in the Minneapolis branch and at the Home Office in New York City. Later I was transferred to what was known as the Compensation and Liability Department where we had to promulgate rates for individual risks, risks which either weren't properly classified from any classification contained in the manual or which fell under a classification for which no rate was given. Those are what we call A rated risks, the symbol A in lieu of a rate and the risk must be referred to the Bureau for establishment of the proper rate. They also worked

on the revision and establishment of the manual rates in general by classification, setting up new classifications and revising the manual rate periodically, based on experience.

Q. There are two or three different kinds of rates, aren't there—one the standard manual rate and the other equity ratings and experience ratings?

A. That is correct.

Q. What legal authority, if any, does this Bureau have as to the fixing of rates?

A. In most states it has no legal standing. I don't know that I am qualified to give you a very complete answer to that. I do know that in the State of New York it is the official filing agent for its group of member companies with the State Insurance Department. It has an official standing for those companies and in a number of other states it is recognized as the official filing agent for its membership. I don't think it has any legal standing as a state rating bureau would.

Q. You don't know of any state law that makes it mandatory to follow the rates prescribed by that bureau, do you? [fol. 1324] A. Not a state law. I do know that the insurance commissioners have prescribed in certain states, such as Maryland, Maine, New Hampshire and Vermont that all classes of carriers must conform to the rates promulgated by the National Bureau in those states. That would include mutual carriers, although they don't have membership in the National Bureau as such. They must subscribe to those rates. That may be true in other states but I can't think of any offhand. I have been out of touch with that for a few years.

Q. There is no compulsion that you know of to compel the companies to conform to the rates of that Bureau in what are called these large interstate blanket policies, is there?

A. No, the only compulsion would be as to those particular states such as I named. They would have to conform to the rates promulgated in those states but there would be no compulsion to conform to the Bureau's rates in other states in which the same assured might be conducting operations. Is that what you mean?

Q. Yes. If an insurance company is making a broker a price on a coverage that extends, we will say, over twenty-five or thirty states, there will probably be only three or

four of those states that have any law of the kind you speak of, wouldn't there?

A. It would depend on the line of insurance. If it is compensation, practically all states have some type of bureau to which all companies must subscribe. If it is miscellaneous public liability or automobile insurance, there are very few states where the law would compel a company to subscribe to certain bureau rates.

Q. When the insurance company makes a price, as I believe Mr. Thomas, one of the brokers here in New York, testified was customary on a sort of an aggregate of all of these various coverages which would be submitted in [fol. 1325] one of your programs, they might, in trying to arrive at the price, apparently follow prescribed rates in the states which have compulsory rates or regulations, but when they go to make up the whole price for the coverage they could put in such amounts as they saw fit in these other states that do not have any rate requirements, couldn't they?

A. I believe they could.

Q. In that way isn't it true that if the company wants to do it they can practically nullify the rates in these particular states which do have fixed rates by making a total price composed of probably ridiculously low items in states where it is permissible, and the result would be the same as if there were no rates fixed in any of the states? Isn't that true?

A. Well, they definitely have to charge in their policies the prescribed premium for all states where there are rate regulations. If you mean that because they do that they charge a lower premium in certain other states than they might if they didn't have any legal restrictions, I suppose that is true.

Q. I mean that the result would be something like that store which puts on what they call a "penny sale." They charge you twenty-five cents for the first article and one cent for the second one. The result is, of course, that you are getting two articles for twenty-six cents, at thirteen cents apiece, and what they pretend to be charging you for the first article is really more or less immaterial. What you are looking at is that you are getting the two articles for twenty-six cents and it doesn't make any difference whether they say you are paying twenty-five cents for the first and one cent for the second?

A. Yes, an underwriter's concern would be with the total premium that he gets, whether it is sufficient to cover the [fol. 1326] risk, and if it is he wouldn't care particularly how that premium is distributed between states if he gets a sufficient premium to take care of the entire risk.

Q. In other words, the broker is not interested in the particular items that the insurance company puts in, that is the items of premium charge for the various States? What he looks at is the net result of the whole combined risk, isn't it, insofar as the cost is concerned?

A. Generally, yes, but we always have in mind that the break-down in that premium would have some relation to equity because under such a program, if an assured cancelled or discontinued operations in a state where a very small premium had been charged, he wouldn't get an equitable return premium. So brokers do have to keep those facts in mind.

Q. That would be about the only case in which it would be at all material?

A. Yes. Otherwise it wouldn't be material to us. We are trying to purchase insurance for a sum of money and the bookkeeping methods followed by the companies would be of no concern or interest to us.

Q. And that consideration wouldn't be material to a company that had no idea of discontinuing its operations in a state, would it?

A. No.

Q. Does your office follow the custom of combining all different types of risks that an assured would have, such as fire, casualty, surety and fidelity, all in one contract with the insurance company?

A. No, not in one contract. We try, as far as possible, to place all the different lines of insurance of a customer with the same underwriter.

Q. And you get a joint price on the whole, don't you, if you have a program embracing fire, casualty, fidelity, surety and the various risks?

A. No, we do not.

[fol. 1327] Q. Wouldn't you get a bid from the Insurance Company on what the company would take the whole risk for and probably also split it up into what they would take each separate risk for?

A. The same company can't write fire insurance, for instance. You would have to leave that out. Many of the

companies that write casualty don't write surety but, when we get a proposal, all of the casualty lines might be in the same quotation. For instance, the workmen's compensation, automobile and public liability might be embodied in one quotation with a break-down between the various lines of insurance set forth.

Q. Wouldn't the Travelers, with its associated group, be able to handle the whole business?

A. They don't write bonds, in the first place. They don't write surety bonds.

Q. Do they handle all of it except that?

A. I don't know whether they write marine. We don't go as far as you have indicated in concentrating all lines with a given underwriter.

Q. You don't follow that practice in your office?

A. No, not to that extent. We concentrate all of the fire lines, as far as we can, among the same group. It has to be spread because of the retentions of each company and I would always attempt to place the compensation and the automobile and public liability with the same company but we don't go to the extent of trying to get the fire insurance in with an affiliated fire company or the marine insurance with an affiliated marine company. We don't go to that extent in concentrating our business because you have to deal with different underwriters. A man who underwrites workmen's compensation doesn't underwrite fire or marine. You would be dealing with entirely different branches of a company.

Q. Take a concern like the Travelers and its affiliated [fol. 1328] companies; would there be anything impracticable about asking that group to make you a bid on the fire and casualty and what other lines that group can handle?

A. I don't see anything impractical about it. It just doesn't happen with our type of organization. I don't handle the fire insurance and another man doesn't handle the compensation and liability or marine or burglary or any of the other lines. They are handled in different departments and each department has its own group of underwriters that that department head thinks are the best for his needs.

Q. You gave a list of states in which you have risks for your clients. Did you mention Virginia or not?

A. No, I did not. At the present time we haven't any risk that is domiciled in Virginia. I mean any kind of

plant or construction job or office. We have certain risks whose salesmen travel through that state in the course of their business but that is as close as we can come to that state at the present moment. We have large contractors who may work in any state and may get a contract in Virginia tomorrow or may not get any work there for ten years. We can't tell what states we will be servicing a year from now. It depends on our customers and where they do work.

Q. Do you have a non-resident broker's license in Virginia?

A. I don't believe we have at the present time. We have in all states where we have business and where such a license is required.

Q. Do many states require that license, do you know?

A. I think we have perhaps ten at the present time. I don't handle the licensing. Our Secretary does that. I know I sign a good many checks around the first of each year to various state officials.

[fol. 1329] Q. Have you ever had any extensive casualty business in Virginia through your office?

A. Not during my service with the company.

Q. How would you go about trying to decide what casualty company would be in the best position to serve a risk in Virginia?

A. It would depend upon the type of risk.

Q. Say an automobile fleet risk or workmen's compensation risk or almost any kind of risk?

A. When I say the type of risk I have in mind, if it were a steel construction job, that would be a particular company that we have found has a far-flung organization and has had a good deal of experience with such risks.

Q. I believe you mentioned that you thought the Travelers had the best organization of that kind?

A. That is our opinion and that is the place where we normally go when we have such a risk to handle.

Q. Isn't it true that the prospective merit of the service organizations in the different states might vary with the different companies? One might have the best organization in Virginia and another might have the best in California?

A. We don't find it so. We never have had that experience. It is true, if you are speaking of fleet risks or chain store risks, that certain companies, even though they might be well qualified here in New York, wouldn't have a suffi-

cient organization in all the little towns through all the states in the country. That is something that we have to consider with each individual risk, whether the company has claim representatives and inspectors with a sufficient volume of business in that territoty to give you prompt and [fol. 1330] efficient service.

Q. You don't make any investigation of the organization one of these companies might have in any particular state, do you? You just rely on the general reputation?

A. We rely on our past experience in dealing with that company in states other than New York. We have had business in practically all states.

Q. If you had a program which you have designed for one of your prospective assureds, would you present the same type of risk to more than one insurance company or confine yourself to one?

A. We frequently present it to more than one if it is competitive.

Q. The same identical risk?

A. Yes, the same risk or proposal. If it is a risk which lends itself to equity rating where it isn't a matter of taking certain rates that are prescribed in advance, we would go to a group of companies, any one of which we feel is able to service that risk, and get a quotation from them.

Q. What is the purpose of doing that? Is it to try to get the cheapest rate for your client?

A. Yes, that is our duty as insurance counsellors or advisors, to first select the company that can give proper service and, secondly, to see that the policy coverage is correct and, third, to see that the price is as good as can be had in a company that meets the first two qualifications.

Q. So then these insurance companies are in a competitive position as between themselves as to which one of them is to get this business?

A. Yes.

Q. Isn't it frequently also true that several brokers will be working on a program, each of his own, for the same assured?

[fol. 1331] A. That is true.

Q. And they also more or less pit the companies against one another to reduce the rates as much as possible?

A. That is true.

Q. Generally speaking, assuming that the insurance companies are of equal standing, does the broker who gets the best price generally get the business?

A. Generally speaking, yes.

Q. So that this business really goes more or less on a competitive basis among the brokers and is not necessarily given to a broker on account of any great amount of confidence that the assured might feel in that particular broker? He probably feels enough confidence in all of them to give it to whatever one gets the best price for him?

A. In the first instance, before a broker is brought in and permitted to have sufficient information to obtain the quotation, there has been a weeding out. They don't indiscriminately give all the brokers in the City of New York a chance to quote.

Q. If they did they would be worried to death?

A. There is a selection, in the first place. A large assured will decide that they are going to let half a dozen, usually large, brokers, if it is a large risk, bid on the insurance and those are firms, any one of which the assured would be willing to place his insurance with and any firm that he didn't have confidence in wouldn't be given the information to go out and get a quotation. We can't get in and get information to quote on these risks that we might want to get unless we are sufficiently well known and well introduced. Otherwise we will never reach a point where we can make a quotation.

[fol. 1332] Q. But well established brokers, even in a city as large as New York, are pretty well known around among the large assureds, aren't they?

A. Fairly well.

Q. Do these brokers take up much time of the assured in getting this information on which to formulate their programs?

A. They usually do. If they are going to do any kind of a job they have to.

Q. And that is the reason, naturally, why the assured wouldn't want to have too many brokers around, taking up the time of his employees?

A. That is right. Frequently they will only have two brokers, and sometimes only one, sound out the markets because it involves a great duplication of material that has to be distributed.

Q. What do you mean by "sound out the market?"

A. When I say "market" I mean the insurance markets, the various underwriters.

Q. What they are willing to take the risk for?

A. That is what we call the market. When we say there isn't any market for a certain type of business, we mean that none of the companies care for that class.

Q. By "market" you also mean the company that is willing to take it at the all-around best and most attractive price for the risk; is that correct?

A. That is right. It must be a company, as I said before, that has an organization that can service that risk in its particular locality. There must be sufficient financial stability so that we have no hesitancy in placing the business in that company.

Q. Is there any standard commission rate for brokers in [fol. 1333] New York in these various lines of risks where the premiums are arrived at through this experience and equity rating system?

A. There is a standard rate insofar as experience rated risks are concerned.

Q. What is the standard rate on that?

A. It varies by line of insurance. On workmen's compensation in New York, for instance, the rate is eight and one-half percent. In New Jersey it is ten percent and in most states it is ten percent.

Q. What is the rate on a manual risk of that same kind?

A. That is the rate of commission. On fire insurance it varies by type of risk. The average for a broker, I would say, would be in the neighborhood of twelve to twelve and one-half percent. It fluctuates between ten and fifteen percent generally.

Q. On what type of risk?

A. On fire insurance. On automobile insurance it is fifteen percent and in certain states as high as seventeen and one-half percent.

Q. If the Acquisition Cost Conference has allowed for a producer's commission twenty-five percent, we will say, in automobile liability cases, what becomes of that extra part that the broker doesn't get?

A. I don't know that I get your question.

Q. You are familiar with the Acquisition Cost Conference, aren't you?

A. Yes, generally speaking.

Q. That Conference has agreed on certain standards of producer's commissions?

A. Yes, that is right.

Q. And I believe that in Virginia the State Corporation Commission, in arriving at the premium rate, puts in a factor that takes care of that?

[fol. 1334] A. That is right.

Q. That factor being allowed in the premium rate and the broker not getting it at all, I would like to know what becomes of the balance of it?

A. Well, if there were such a case where the company pays less than the prescribed rates, the balance would go to the company.

Q. The standard rate of fire insurance producer's commission, throughout the country, is generally twenty percent, isn't it?

A. That must be the total so-called acquisition cost. Perhaps I had better explain that. The total acquisition cost on compensation is fifteen percent. That is divided between brokerage commission and what they call field supervision, their branch office expense or general agency, if the company operates through a general agent instead of a branch office.

Q. What part of that would you get?

A. We would get ten and the branch office, for its expenses, would get five and the general agent for its expenses would get five. The two together make up the total acquisition which is set forth in the Acquisition Cost rules.

Q. If you get from ten to twelve percent of a fire insurance premium and the general rate paid to a producing agent in Virginia is twenty percent, then you think the other eight or ten percent would go into the branch office?

A. Yes, to maintain the branch office. That is the money that is used to maintain the branch office or that the general agent uses to maintain his office.

Q. Has there been any compilation of figures published on any particular company as to the proper loading of branch office expense?

[fol. 1335] A. I haven't seen any recently but I know that in general on casualty lines the branch office expense has equalled the seven and one-half percent for branch office or general agency expense. I haven't made any study of that recently because it no longer is a matter of great concern to me. It was when I was a company employee and I fol-

lowed it very closely at that time as to whether we were keeping within our allowed percentage in operating our branch.

Q. So the company just considers whatever difference there is between the producer's commission which is allowed in the standard rate and whatever they pay the broker as going to Branch Office expenses, do they?

A. Branch Office or General Agent. Some companies operate through Branch Offices and others prefer to operate through general agencies.

Q. If they operate through a general agent he operates on a commission basis, doesn't he?

A. That is his commission, the part that would normally go to the Branch Office. I believe there are statistics which show whether that amount is sufficient or excessive for the operation of Branch Offices.

Q. Do the fire companies have branch offices?

A. Yes, some do.

Q. You don't know of any company that has in Virginia, do you?

A. No. I would think that most of them would operate through general agencies in a State like Virginia. The branch offices, generally speaking, are confined to the large metropolitan areas—Boston, Chicago, Baltimore, and cities of that type.

Q. So that the difference between the producer's commission which would be allowed under a Virginia rate structure [fol. 1336] on a contract negotiated in New York and what the company gets out of that commission factor of the premium goes to maintain the New York Branch Office, does it not?

A. Yes, I would think that is generally true, although they don't call it that item. They call it field supervision expense which means it is the expense of the field employees that service that business.

Q. You don't mean the Engineering Department, do you?

A. And the Inspection Department and payroll audit.

Q. You mean their general production department?

A. They call it field supervision expense. I think that is the designation that they give to it.

Q. There are very few insurance agents as distinguished from brokers in New York, aren't there?

A. Brokers are greatly in the majority. There are a large number of agents in New York.

Q. In casualty lines?

A. Yes.

Q. How about in fire lines?

A. Fire also.

Q. It is very small in proportion to the number of brokers?

A. Yes, numerically it would be small but there are very large and important agencies here in the city.

Q. Are they general agents usually?

A. General agents or what they term Borough agents.

Q. What is a Borough agent?

A. I don't know whether I can give you a proper definition. I would say the difference between a Borough agent and a general agent is that the general agent reports to the Home Office of the company and a Borough agent usually [fol. 1337] reports to a New York Branch Office of the company. In other words, a Borough agent is a supplement to the efforts of the Branch Office in producing business.

Q. They both do the same type of work, don't they?

A. Yes, they both try to produce business from brokers and local agents.

Q. Aren't there a very small number of these local agents as distinguished from general agents and Borough agents?

A. In greater New York proper that is true as to casualty. There are very few. They are mostly up in the Bronx and out on Long Island.

Q. Practically none in the fire business, are there?

A. I can't answer that. I don't know much about the production of fire business. I have never been in that end of it.

Q. The field supervision you speak of is supposed to be supervising the company's agents?

A. It is supervising all avenues of business, whether it be the agent's business or the Branch Office or broker's business.

Q. They don't supervise the broker, do they?

A. They have to deal with the broker on the writing of the insurance and get the contract written the way the broker feels it should be written and see that it has all the essential elements of coverage and that the rates are proper. They handle the negotiations with the broker or the local agent in the arranging of the insurance.

Q. Do these Branch Offices do the underwriting also, generally speaking?

A. Yes.

Q. Do they compile these competitive prices that are made on these large blanket policies or is that usually sent to the Home Office?

[fol. 1338] A. It is usually sent to the Home Office. Most Branch Offices are not autonomous. They don't have complete authority to put the company on oral risks. They have to consult with their head office on any large undertaking.

Q. When your client has a claim in another State do you frequently go there or not?

A. No, not unless there is something so unusual about the claim that our presence can be helpful in any way. Ordinarily there wouldn't be any occasion for us to go to the scene of the accident or to the city in which it occurred.

Q. Do you recall having been to any at all recently?

A. No, I haven't. We have a loss department and I do know that they go out and examine buildings that have been destroyed or partly destroyed by fire and go to see assureds who are involved in accidents in other States, if there is any necessity for it. I know there have been occasions when we have done it.

Q. You say that is very rare?

A. Yes, it would be rare except in the case of fire. In a fire loss we invariably have to have our man present to go over it with the adjuster and make sure that the settlement is reasonable and fair.

Q. Do you have an engineer in your office?

A. Not as such. I don't have anyone with that designation. I have had inspection and engineering experience on the lines that I handle and our fire man has had that experience, but we don't have anyone with the title of engineer and we don't maintain what you would call an Engineering Department. Some brokerage houses do. I presume you know that.

Q. What percentage of brokerage houses would you say [fol. 1339] do have an engineering department?

A. I would say it would be a very small percentage. It is limited to the very large brokerage houses who have so much fire business that they think they need a special department for that type of work.

Q. Is that work done mostly in the fire line?

A. Yes.

Q. Do you know of any distinction between the casualty and surety business and the fire insurance business that would make it any more reasonable in the one case or the other for a local agent to receive a part of the commission on business covering in his territory?

A. Certainly not on casualty or surety. I don't know that I am in position to answer on fire. I don't know whether there is something special that they could do on a fire line that we couldn't do here, but I know that isn't so as to surety business or casualty business.

Q. And you don't know any reason why it should be so in the fire business, do you?

A. I can't think of any, though I am not an expert. I am not qualified to answer that.

Q. You can't make any distinction yourself, so far as your experience in the agency business is concerned?

A. No, I can't.

Redirect examination.

By Mr. Christian:

Q. If several programs should be submitted by several brokers at the same time to a prospective assured, do those programs for proposed casualty contracts vary according to the judgment of the various brokers as to the various amounts and kinds of coverage?

[fol. 1340] A. Generally speaking, they would only differ in the premium quotation, though that isn't all. There are times when a broker will think he can arrange broader form of coverage than the assured has heretofore had or has specified in his request for quotation. He will recommend that broader form or a new form of protection. He may recommend changes in the limits. Whereas the request for quotation is for limits of $25,000 and $50,000 and $5,000 property damage, he may feel that they ought to have $100,000 and $300,000 and that they ought to have a $20,000 property damage limit. Brokers have different judgments as to what limits are adequate under the different conditions and some will recommend a different form of contract.

Q. Does the insured invariably take that contract with the quotation of the cheapest total price or does he sometimes take another contract that will cost him more because he likes the kinds of coverage suggested and the amounts of coverage contained in it?

A. They frequently take a form that costs more money because they think the coverage is better. It may be that they have a preference for a particular company or a particular broker and have more confidence in their ability to carry out the terms of the contract.

Q. I got the impression on your cross-examination that you rather acquiesced in the general statement that when there were competing brokers it was a matter of price.

A. All things being equal, I think that is so, but they are not always equal and there are times when they don't take the lowest price. If there are no other outside factors to consider, the price would be the determining factor.

[fol. 1341] OFFER IN EVIDENCE

Note: The Notary received from Mr. T. T. Moore on March 22, 1939, a paper containing certain requested information, and the following is a copy thereof:

Information Requested by Mr. Andrew Christian, Attorney for the Plaintiff, in the Case of Wm. H. Osborn, et al. v. Thos. W. Ozlin, et al., etc., of T. T. Moore When Depositions in This Case Were Taken.

The information relating to resident agents, solicitors, special agents and agency licenses requested is as follows:

Resident Agents

No. of persons holding resident agents' licenses	4,200
No. of licenses held by resident agents	15,397
No. of licenses held for U. S. stock fire companies	6,856
No. of licenses held for alien stock fire companies	1,376
No. of licenses held for U. S. mutual fire companies	904
No. of licenses held for domestic stock fire companies	311
No. of licenses held for domestic mutual fire companies	56
No. of licenses held for U. S. stock casualty companies	4,019
No. of licenses held for alien stock casualty companies	187
No. of licenses held for U. S. mutual casualty companies	1,097
No. of licenses held for domestic stock casualty companies	58

No. of licenses held for domestic mutual casualty companies 533

Solicitors

No. of persons holding solicitors' licenses 362
No. of licenses held by solicitors 1,126
No. of licenses held for U. S. stock fire companies 589
[fol. 1342] No. of licenses held for alien stock fire companies 102
No. of licenses held for U. S. mutual fire companies 36
No. of licenses held for domestic stock fire companies 40
No. of licenses held for domestic mutual fire companies 6
No. of licenses held for U. S. stock casualty companies 287
No. of licenses held for alien stock casualty companies 21
No. of licenses held for U. S. mutual casualty companies 30
No. of licenses held for domestic stock casualty companies 1
No. of licenses held for domestic mutual casualty companies 14

Special Agents

No. of persons holding special agents' licenses 210
No. of licenses held by special agents 557
No. of licenses held for U. S. stock fire companies 337
No. of licenses held for alien stock fire companies 50
No. of licenses held for U. S. mutual fire companies 32
No. of licenses held for domestic stock fire companies 4
No. of licenses held for domestic mutual fire companies 2
No. of licenses held for U. S. stock casualty companies 98
No. of licenses held for alien stock casualty companies 1
No. of licenses held for U. S. mutual casualty companies 23
No. of licenses held for domestic stock casualty companies 2
No. of licenses held for domestic mutual casualty companies 8

Resident Agency

No. of firms or corporations holding resident agency licenses	593
No. of licenses held by resident agencies	4,289
No. of licenses held for U. S. stock fire companies	2,444
[fol. 1343] No. of licenses held for alien stock fire companies	511
No. of licenses held for U. S. mutual fire companies	137
No. of licenses held for domestic stock fire companies	111
No. of licenses held for domestic mutual fire companies	1
No. of licenses held for U. S. stock casualty companies	942
No. of licenses held for alien stock casualty companies	58
No. of licenses held for U. S. mutual casualty companies	51
No. of licenses held for domestic stock casualty companies	15
No. of licenses held for domestic mutual casualty companies	19

The information herewith submitted is taken from our records as of March 7, 1939, and does not take into consideration any changes since that time.

The other information is given in question and answer form, the questions referred to beginning on page 1040 of the record. In these questions the term "taxable premiums" is used throughout and this has been interpreted to mean net premiums received in Virginia, that is gross premiums less returns, less reinsurance.

1. How much of the $9,830,634 of premiums, other than fire, life, title and ocean marine premiums, is non-cancellable accident and health insurance?

When the figure of $9,830,634 was originally used, I believe it was stated that this represented Virginia net casualty premiums received by stock casualty companies and it is so shown on the tabulation from which I was testifying. However, after careful investigation, we find that this figure includes premiums received by four companies which I believe should be more correctly classified as mutual companies. After making an adjustment for these four companies, this figure becomes $9,511,138. Of

[fol. 1344] this amount ($9,511,138) $367,305 represented non-cancellable accident and health premiums.

2. How many casualty and surety companies were authorized to write either accident and health or non-cancellable accident and health insurance, or both, in Virginia in 1937?

Sixty-nine companies were authorized to write either accident and health or non-cancellable accident and health insurance, or both, in Virginia in 1937.

3. How many of these sixty-nine companies were domestic, how many foreign, or alien, how many stock and how many mutuals?

The requested tabulation of these companies is as follows:

Domestic	2
Foreign or alien	67
Stock	59
Mutual	10

4. Give a figure comparable to the $9,511,138 mentioned above as representing net Virginia casualty premiums for the year 1937 for mutual companies and divide this figure into domestic and foreign or alien.

The total net Virginia casualty premiums received by mutual companies in 1937 amounted to $3,362,140. Of this amount $160,899 was received by domestic companies and $3,201,241 by foreign or alien companies.

5. Which companies licensed to conduct casualty and surety business had no casualty premiums except non-cancellable accident and health premiums? Give names of companies and amounts of net premiums.

Continental Assurance Company	$1,109
Paul Revere Life Insurance Company	39,247
North America Assurance Society	3,219
Total	$43,575

6. Give the names of the companies whose casualty busi-
[fol. 1345] ness is limited to accident, health and non-cancellable accident and health business with the amount of Virginia net premiums for each.

This list includes both stock and mutual companies.

Stock	Amt. of Premiums
Connecticut General Life Insurance Company	$44,352.00
Continental Assurance Company	1,109.00
Federal Life and Casualty Company	28,130.00
Illinois Bankers Life Assurance Company	309.00
Inter-Ocean Casualty Company	47,342.00
Life and Casualty Insurance Company of Tennessee	69,943.00
Massachusetts Protective Association	175,093.00
Monarch Life Insurance Company	28,726.00
National Life and Accident Insurance Company	3,611.00
North American Accident Insurance Company	37,854.00
Pacific Mutual Life Insurance Company	159,068.00
Paul Revere Life Insurance Company	39,247.00
Provident Life and Accident Insurance Company	479,692.00
Reliance Life Insurance Company	30,509.00
State Farm Life Insurance Company	903.00
Washington National Insurance Company	77,951.00
Mutual	
Benefit Association of Railway Employees	44,131.00
Mutual Benefit Health and Accident Association	151,830.00
Virginia Health and Accident Association	8,963.00
Equitable Life Assurance Society of the U. S.	127,066.00
Metropolitan Life Insurance Company	157,981.00
North America Assurance Society	3,219.00
[fol. 1346] Prudential Insurance Company	31,250.00

7. Give the amount of Virginia net casualty premiums returned by the following companies:

	Amt. of Premiums
Travelers Insurance Company	$1,036,951.00
Travelers Indemnity Company	231,734.00
Fidelity and Casualty Company of New York	486,603.00
Aetna Casualty and Surety Company	464,564.00
United States Fidelity and Guaranty Company	588,557.00
Maryland Casualty Company	539,236.00
Employers' Liability Assurance Corporation Ltd.	357,474.00
New Amsterdam Casualty Company	268,100.00
Century Indemnity Company	153,073.00

8. Mr. Christian also requests a breakdown of a figure of $10,368,780 which represents premiums returned by stock fire insurance companies in Virginia for the year 1936.

Inasmuch as the figures given relating to casualty companies are for the year 1937, I assume that the information requested relating to fire insurance companies should also be for the year 1937. The total net premiums received in Virginia, as reported to us by all fire insurance companies, covering all lines of business done by these companies for the year 1937 amounted to $12,149,425. This figure includes stock, mutual and reciprocal companies. The breakdown of this figure by classes of companies is as follows:

Stock	$10,617,644.00
Mutual	1,398,365.00
Reciprocal	133,414.00

[fol. 1347] Of this amount of total net premiums received (12,149,425.00) $8,391,638.00 represents net Virginia premiums received for fire business only. The breakdown of this latter figure by classes of companies is as follows:

Stock	$7,119,144.00
Mutual	1,144,085.00
Reciprocal	132,028.00

The breakdown of the figure of $8,391,658.00 between domestic and foreign or alien companies by classes of companies is as follows:

	Domestic	Foreign
Stock	$248,113.00	$6,871,031.00
Mutual		1,140,485.00
Reciprocal		132,028.00

No domestic mutual companies such as the Mutual Assurance Society of Virginia and county mutual fire insurance companies were included in the above figures.

You will note that the questions quoted above are not quoted exactly from the record but wherever possible these questions have been consolidated and simplified.

[fol. 1348] IN UNITED STATES DISTRICT COURT

LETTER FROM ATTORNEY FOR DEFENDANTS ACCEPTING STATEMENT OF EVIDENCE AS SUBMITTED

Filed December 1, 1939.

December 1, 1939

The Clerk of the United States District Court
Eastern District of Virginia
Post Office Building,
Richmond, Virginia

Re: Osborn, et als., v. Ozlin, et als., etc.

DEAR SIR:

I accept the statement of evidence including exhibits filed in your office today by the Appellants in the above cause as correctly representing what it purports to represent, viz: a copy of a part of the transcript of the testimony, and a copy of a part of Exhibit 1, and copies of Exhibits 3-C, 4, 5, 6, 7, 39, 40, A, C, and D.

This is to inform you that the Appellees desire no other portions of the testimony and no other exhibits, or parts thereof, to be included in the record, and agree that you may immediately forward the transcript of the record in this cause to the Supreme Court, (to consist only of the matter designated in the praecipe, including the above mentioned statement of evidence including exhibits), the Appellees hereby waiving their right to file with you within ten days from this date a designation of additional portions of the record desired to be included in such transcript.

Very truly yours, (Sgd.) Abram P. Staples, Attorney General of Virginia and, as such, Attorney for Appellees.

[fol. 1349] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL

Filed December 1, 1939

TO THE CLERK:

You will please make a transcript of record to be filed in the United States Supreme Court pursuant to an appeal

allowed in the above entitled cause and appellants hereby designate for inclusion in such transcript of record the following pleadings, papers, documents and exhibits and no others to wit:

1) The Complaint.

2) Order entered December 5, 1939, convening a Specially Constituted District Court and restraining enforcement of the statute.

3) Answer of defendants.

4) Letter dated January 5, 1939 from Morris A. Soper, C. J., to Robert N. Pollard, D. J., stating testimony shall be taken by deposition.

5) Order entered January 10, 1939 continuing the restraining order.

6) Opinion of the Court filed September 6, 1939. (The opinion is to be printed as a part of Item No. 14 herein. The opinion of the court contained no numbers opposite separate paragraphs of the opinion as set forth in Item No. 14.)

7) Motion of plaintiffs filed October 2, 1939, for new trial of issues raised by application for interlocutory injunction or for rehearing of said application, for amendment of opinion filed September 6, 1939 and Findings and Conclusions therein, and for additional Findings and Conclusions.

8) Motion of plaintiffs filed October 2, 1939 for the granting of an injunction during the pendency of appeal.

[fol. 1350] 9) Order entered October 6, 1939 denying motion of plaintiffs for a new trial, etc. (Item No. 7 herein).

10) Final decree dismissing complaint enetered October 6, 1939.

11) Order entered October 11, 1939 restraining enforcement of statute pending appeal to the Supreme Court.

12) Notice of Appeal and acknowledgment of service on appellees on November 3, 1939—filed on same date.

13) Petition for Appeal filed November 3, 1939.

14) Jurisdictional Statement together with Exhibits attached, filed November 3, 1939.

15) Assignment of Errors filed November 3, 1939.

16) Order allowing Appeal entered November 3, 1939.

17) Citation filed November 3, 1939 including acceptance of service by appellees on same date.

18) Appeal bond filed November 3, 1939.

19) Notice of paragraph 3 of Rule 12 of the Rules of the Supreme Court, and acknowledgment of service on Novem-

ber 3, 1939 on appellees of copies of the Petition for Appeal, order allowing Appeal, Assignment of Errors, Jurisdictional Statement and of Notice of paragraph 3 of Rule 12 of the Rules of the Supreme Court—filed November 3, 1939.

20) Stipulation of Facts dated January 12, 1939.

21) Order entered January 18, 1939 filing Stipulation of Facts.

22) Statement of Evidence and Exhibits designated by appellants for inclusion in transcript, filed herewith, December 1, 1939, and order approving same.

23) Letter dated December 1, 1939 from Abram P. Staples, Attorney General of Virginia and, as such, attorney for appellees, to the Clerk of the United States District Court, Eastern District of Virginia.

24) This Praecipe and acknowledgment of service of a copy thereof.

[fol. 1351] 25) Certificate of the Clerk.

Said Transcript to be prepared as required by law and the Rules of this Court and of the Supreme Court of the United States and to be filed in the office of the Clerk of the Supreme Court on or before the 13th day of December, 1939.

Dated December 1, 1939.

(Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, N. Y. (Sgd.) Andrew D. Christian, Mutual Building, Richmond, Va., Attorneys for Appellants.

Service of a copy of the foregoing Praecipe including a copy of the Statement of Evidence and Exhibits referred to in Item 22 thereof is hereby admitted and acknowledged this 1st day of December, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia and, as such, Attorney for Appellees.

[fol. 1352] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1353] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed December 21, 1939

Now Come the above named appellants pursuant to Paragraph 9 of Rule 13 of the rules of this Court and state that the points upon which they intend to rely in this Court in this case are as follows:

Point I

Section 4222 of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that its enforcement will deprive the appellants of their property without due process of law.

Point II

Section 4222 of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that [fol. 1354] its enforcement will deprive the appellants Osborn, MacNeil and Adair of the equal protection of the laws.

Point III

Section 4226 (a) of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that its enforcement will deprive the appellants of their property without due process of law.

Point IV

Section 4226 (a) of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the provisions of said Section 4226 (a) are arbitrary and enforcement of said statute will deprive the appellants of their property without due process of law.

Point V

As further points to be relied upon, the appellants adopt their assignments of error.

The appellants further represent that the whole of the record as filed is necessary for the consideration of this case.

John Lord O'Brian, 37 Church Street, Buffalo, New York, Andrew D. Christian, 907 E. Main Street, Richmond, Virginia, Attorneys for Appellants.

[fol. 1355] Due and personal service of the foregoing statement and designation is hereby admitted this 20th day of December, 1939.

Abram P. Staples, Attorney for Appellees.

[fol. 1356] [File endorsement omitted.]

Endorsed on cover: File No. 43,999. E. Virginia, D. C. U. S., Term No. 592. William H. Osborn, Channing F. MacNeil, Lewis C. Adair, et al., Appellants, vs. Thos. W. Ozlin, William Meade Fletcher and Lester Hooker, etc., et al. Filed December 15, 1939. Term No. 592, O. T., 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL.,

Appellants,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

STATEMENT AS TO JURISDICTION

JOHN LORD O'BRIAN,
ANDREW D. CHRISTIAN,
Counsel for Appellants.

INDEX.

Subject Index.

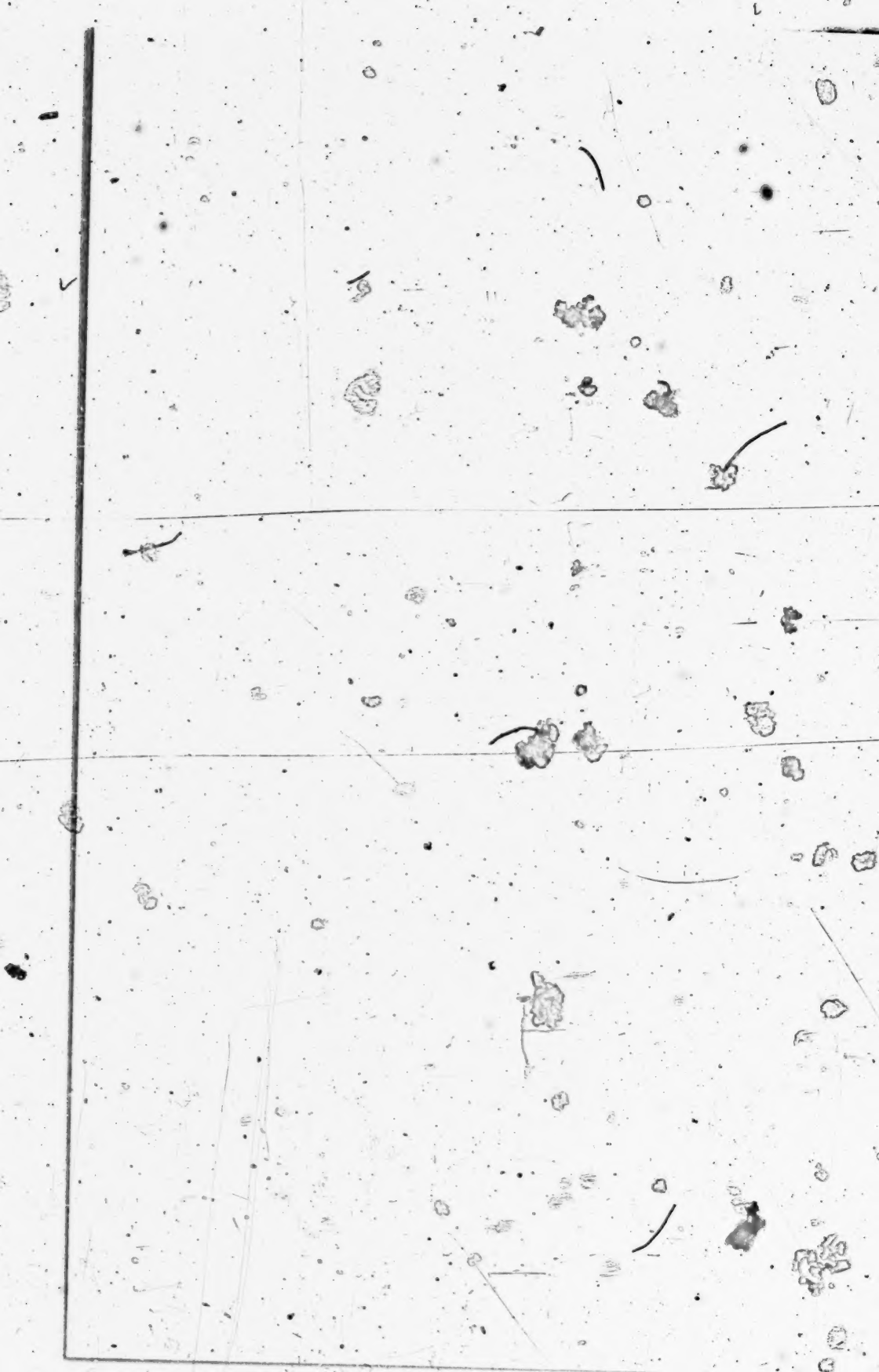
	Page
Statement as to jurisdiction	1
Statutory provision sustaining jurisdiction	1
The statute involved	2
Dates of decree and application for appeal	3
Nature of case, rulings below, and cases sustaining jurisdiction	3
Exhibit "A"—Sections 4222(a) and 4226(a) of the Code of Virginia	5
Exhibit "B"—Opinion of the District Court of the United States for the Eastern District of Virginia	8

Table of Cases Cited.

Brude Ex parte, 271 U. S. 461	4
Highland Farms Dairy v. *Agnew*, 300 U. S. 608	4
Smith v. *Wilson*, 272 U. S. 388	4

Statutes Cited.

Acts of the General Assembly of Virginia of the Session of 1938, effective June 21, 1938, Chapter 218 (Acts of 1938, p. 343)	2
Code of Virginia:	
Section 4221-a	2
Section 4222-a	2
Section 4226-a	2
Section 4235	2



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL.,

Appellants,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

JURISDICTIONAL STATEMENT UNDER RULE 12, OF UNITED STATES SUPREME COURT

(Filed November 3rd, 1939)

The plaintiffs, applicants for the allowance of an appeal to the Supreme Court of the United States to review upon appeal a final decree of the District Court of the United States for the Eastern District of Virginia, entered October 6, 1939, in the above entitled cause, respectfully state the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question, as follows:

I.

Statutory Provision Sustaining Jurisdiction

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States upon appeal

to review the said decree is Sections 238 and 266 of the Judicial Code as amended (Sections 345 and 380 of Title 28, U. S. Code).

II.

The Statute Involved

The statute of the State of Virginia, the validity of which is involved, is Chapter 218 of the Acts of the General Assembly of Virginia of the Session of 1938, effective June 21, 1938. (Acts of 1938, p. 343). The pertinent provisions of this statute, believed to be unconstitutional, are subsection (a) of Section 4222 of the Code of Virginia and Section 4226-a of the Code of Virginia. Section 4222(a) forbids insurance companies authorized to do business in Virginia to make contracts of insurance or surety "on persons or property herein", except through persons who meet the statutory definition (Section 4221-a) of "resident agents" and are licensed as such by Virginia under Section 4235. Section 4222(a) also forbids insurance companies authorized to do business in Virginia to write, issue, or deliver such contracts unless duly countersigned in writing by a resident agent, and forbids a salaried representative of such company to countersign such contracts Section 4226-a requires that a resident agent countersigning a contract shall receive "the usual and customary" commission allowed thereon, and forbids him to pay or allow any part of the commission to a non-resident broker not licensed by Virginia as a non-resident broker, and to pay or allow more than 50% of the commission to a non-resident broker where duly licensed as such by Virginia.

The provisions referred to are set forth in Exhibit A attached hereto.

III.

Dates of Decree and Application for Appeal

The date of the decree sought to be reviewed is October 6, 1939, and the date upon which the application for appeal is presented is November 3, 1939.

IV.

Nature of Case, and Rulings Below, and Cases Sustaining Jurisdiction

In this action plaintiffs applied for an interlocutory injunction restraining the enforcement of the above mentioned statute, upon the ground of its unconstitutionality, by restraining the action of the defendants, who are officers of the State of Virginia charged with the administration of the insurance laws of that State, in the enforcement of such statute. The application for the interlocutory injunction was presented to District Judge Robert N. Pollard who issued a temporary restraining order and called to his assistance to hear and determine the application for the preliminary injunction, Circuit Judge Morris A. Soper and District Judge Luther B. Way.

The Specially Constituted District Court continued the temporary restraining order pending the hearing and determination of the application for the preliminary injunction.

After a hearing of the application for the preliminary injunction, the Specially Constituted District Court on September 6, 1939, filed an opinion in which it held that the application for the interlocutory injunction should be denied, and also held that the prayer of the complaint for a permanent injunction should be denied and the complaint should be dismissed. The opinion of the court was written by Circuit Judge Soper and a copy is attached hereto and marked Exhibit B.

Following the filing of the opinion of the Specially Constituted District Court, plaintiffs on October 2, 1939, filed a motion for a new trial of the issues raised by the application for the interlocutory injunction or for a rehearing of said application, for amendment of the opinion filed September 6, 1939, and the findings and conclusions therein, and for the making of additional findings and statement of additional conclusions. Said motion was denied by order made and entered October 6, 1939. On the same date the Specially Constituted District Court made and entered the final decree herein dismissing the complaint, "upon the findings of fact and conclusions of law set out in the opinion heretofore filed". It is from this final decree that application is made for the allowance of an appeal to the Supreme Court of the United States. As shown by the opinion, the Specially Constituted District Court rejected the contentions of the plaintiffs that those provisions of the statute above referred to are unconstitutional, as being in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Cases believed to sustain the jurisdiction of the Supreme Court of the United States are:

Highland Farms Dairy v. *Agnew*, 300 U. S. 608;
Smith v. *Wilson*, 272 U. S. 388;
Ex Parte Bruder, 271 U. S. 461.

Respectfully submitted,

(Sgd.) JOHN LORD O'BRIAN,
37 *Church Street,*
Buffalo, New York,

(Sgd.) ANDREW D. CHRISTIAN,
907 *East Main Street,*
Richmond, Virginia,
Attorneys for Plaintiffs.

November 3, 1939.

EXHIBIT A

SECTION 4222. Insurance companies not to do business in Virginia except through resident agents or agencies; countersignature; exception; . . .

(a) Insurance companies, legally authorized to do business in this State, except life, title and ocean marine insurance companies, shall not make contracts of insurance or surety on persons or property herein, except through regularly constituted and registered resident agents or agencies of such companies; no contract of insurance or surety covering persons or property in this State, except contracts of life, title and ocean marine insurance and except temporary binders covering other forms of insurance shall be written, issued or delivered by any such authorized insurance company, or any of its representatives, unless such contract is duly countersigned in writing by a resident agent or agency of such company; provided, however, that the countersignature of an insurance agency shall not be considered valid unless such countersignature be attested to in writing by a regularly constituted and registerd resident agent of such company.

No State agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, or any renewal thereof, covering persons or property in this State, except contracts of life, title and ocean marine insurance; provided that this section shall not apply to railroad companies and other common carriers engaged in interstate commerce.

. . . . . .

SECTION 4226-a. Resident agents or agencies to collect full premiums and receive full commissions; exceptions thereto; non-resident insurance brokers; definition; exchange of business; not to sign blank contracts of insurance or surety; penalty; exceptions.—No resident agent or agency may write, countersign, issue or deliver any contract of insurance or surety upon persons or property in this State unless there shall be collected at the time the contract is written,

issued or delivered, or within a reasonable time thereafter, the full premium on such contract, and the resident agent or agency shall be entitled to and shall receive the usual and customary commissions allowed on such contracts, provided that such resident agent or agency may write such contracts at the request only of such other resident agents or agencies, when such agent or agencies are properly licensed to transact the class of business involved in such exchange, and licensed non-resident insurance brokers who may be authorized by law to broker such contracts, and on exchange of business between resident agents or agencies in Virginia and licensed non-resident insurance brokers in other states the resident agent or agency in Virginia may allow or pay to such licensed non-resident insurance brokers, a commission not exceeding fifty per centum of the resident agent's or agency's commission allowed on such business.

Every non-resident person, firm or corporation who shall solicit for compensation, directly or indirectly to be derived therefrom any contracts of insurance or surety on persons or property located in this State, except contracts of life, title or ocean marine insurance, either on account of any person desiring to effect any contract of insurance or surety, or on account of any insurance company, shall be deemed a non-resident insurance broker.

Such non-resident insurance broker shall pay the sum of one hundred dollars for the privilege of transacting such business; provided, that if, by the existing or future laws of any other state, an insurance agent of this State shall be required to pay for license or otherwise an amount greater or less than the amount required by this State from similar brokers of such other state by the then existing laws of this State, then and in every such case all insurance brokers of such other states shall be required to pay for license an amount equal to the amount of such charges and payments imposed by the laws of such other state upon insurance brokers of this State.

Before the Commission shall issue a license to any such non-resident insurance broker, the applicant shall make affidavit that he will not during the fiscal year place directly

or indirectly any contracts of insurance or surety upon persons or property located in this State, except through duly licensed resident agents or agencies, and the Commission may, by such independent investigation as it may deem proper or necessary, satisfy itself that the applicant for license is trustworthy and has sufficient knowledge of the business of insurance to conduct the same intelligently. The Commission may, for good cause, refuse to license any such non-resident insurance broker, or may, at any time it may come to its knowledge that any such broker has violated any provisions of the insurance laws of this State, revoke or suspend the license of said broker.

The license shall be issued by the State Corporation Commission upon the payment of the tax into the State treasury.

No regularly constituted and registered resident agent or agency for any insurance company shall sign or countersign any blank contract of insurance or surety; nor may such resident agent or agency allow or pay to any agent not regularly commissioned and registered, or to any unlicensed non-resident insurance broker any portion of any commission which he receives or is entitled to receive.

Any resident agent or agency violating any of the provisions of this section, upon conviction thereof, shall be fined not less than ten dollars nor more than five hundred dollars, and his certificate or certificates of registration shall be suspended or revoked.

This section shall not apply to title insurance companies nor to life insurance companies (except the casualty branches of such companies), nor to mutual insurance companies, nor to contracts of ocean marine insurance, nor to railroad companies and other common carriers engaged in interstate commerce.

EXHIBIT B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

WILLIAM H. OSBORNE ET ALS., Plaintiffs,

v.

THOS. W. OZLIN ET AL., ETC., ET AL., ETC., Defendants

Before Soper, Circuit Judge, and Way and Pollard, District Judges

SOPER, Circuit Judge:

The bill of complaint in this case prayed that the State Corporation Commission and the Commissioner of Insurance of the State of Virginia be enjoined from enforcing the provisions of Ch. 218 of the Acts of the General Assembly of Virginia of 1938 on the ground that the Act violates the Constitution of the United States, so that an enforcement thereof would deprive the plaintiffs of their constitutional rights. A temporary injunction pending final determination and a permanent injunction were prayed. Accordingly, a temporary restraining order was passed, and the court was organized to hear and determine the matter in controversy. Testimony was taken and arguments of counsel heard, upon which the court has made the findings of fact and conclusions of law herein set out.

The statute amends and reenacts Sections 4222, 4226-a and 4235 of the Code of Virginia relating to insurance, adds new sections as follows: Section 4221-a, defining certain terms, Section 4235-b, requiring registration of solicitors, and Section 4235-c, exempting certain reciprocal or inter-insurance exchanges from the provisions of the Act. Section 168 of the Tax Code of Virginia is repealed. Sections 4222 and 4226-a are the objects of attack in this suit.

Section 4222 forbids insurance companies, legally authorized to do business in Virginia, except life, title and ocean marine insurance companies, to make contracts of insurance or surety on persons or property therein except through

regularly constituted and registered resident agents, and provides that no such contract shall be written, issued or delivered unless it is duly countersigned by a resident agent. No state agent, special agent, company representative or other salaried officer or manager of an insurance company, except a mutual insurance company, is permitted to countersign any contract of insurance or surety.

Section 4226-a provides that no resident agent may write, countersign or deliver any contract of insurance or surety upon persons or property in the state, unless there be collected at the time of writing or delivery, or within a reasonable time thereafter, the full premium on the contract, and the resident agent shall be entitled to and shall receive the usual and customary commissions allowed on such contract. A resident agent is not permitted to write a contract produced by a non-resident broker not licensed by Virginia, and may not pay a licensed non-resident broker more than fifty per cent of the resident agent's commissions. A non-resident broker is any non-resident who solicits for compensation contracts of insurance or surety on persons or property located in the state, except contracts of life, title or ocean marine insurance.

Section 4221-a defines an "agent" as any individual, who solicits, negotiates or effects on behalf of any insurer, contracts of insurance or surety; and defines a "resident agent" or "resident insurance agent" as an individual whose residence and principal place of business are located within the state, and who is authorized to transact business as an insurance agent and to contract in the name of the insurer. "State agent," "special agent" or "company representative" means any person who acts for and on behalf of an insurer in the solicitation, inspection or servicing of risks assumed by the insurer. These definitions do not apply to life insurance companies or life insurance agents.

Sections 4231 and 4180 of the Virginia Code subject an insurance company which fails to comply with the provisions of the statute to fines or suspension or revocation of its license to do business in Virginia, or both.

The plaintiffs in the suit are thirty-four foreign or alien stock companies licensed to conduct in Virginia the casualty

insurance or surety business, or both; and three individuals who have their residence and principal place of business in the state as salaried agents and Richmond branch managers of certain company plaintiffs. These individuals were licensed by Virginia as resident insurance agents prior to June 21, 1938, the effective date of the statute in question, and since that time have been licensed as special agents or company representatives. The defendants are officials of Virginia, charged with the administration of the insurance law of that state. The National Association of Insurance Agents was allowed to intervene as *amicus curiae*.

From the evidence in the case offered to show the effects of the enforcement of the statute, we find the following facts with regard to the production and servicing of casualty insurance and surety contracts.

Production of Casualty and Insurance Contracts

Contracts are secured by persons known as producers, who solicit the public. The producer is either an agent or a broker, licensed by the state in which he acts. An agent is certified and sponsored by a company and, in a sense, is a representative of the company; but as he is paid a commission on the business he produces, which depends in large measure upon his influence in his community, and the services he renders his clients, he is to a great extent the agent of the insured. A broker, on the other hand, has no affiliation with any company. His obligation runs only to the insured; but like the agent, his success depends upon his salesmanship and his reputation and experience as an insurance man.

The producer must induce the insured to buy the insurance through him, and must inform the insured as to the exposure and the coverage. The producer must have the good will and confidence of the insured, particularly when the prospect must disclose confidential information as to his business bearing upon questions of exposure and coverage, as in workmen's compensation or surety contracts. The successful producer must have a sound technical knowledge of these questions, and often must procure special rates for his clients in order to hold their business. The solution of

these questions may be a routine matter or a complicated task. Hence if they are determined, the procurement and acceptance of the policy, that is, the "underwriting," is the next step in the process, and if the producer is authorized to bind the company, he must determine on its behalf whether to make the contract.

Policyholders are regarded as the customers or clients of the producer. During the life of the policy he performs every service to build up and maintain a clientele. He extends credit for payment of the premium, explains the provisions of the policy to the assured, assists the filing and recovery of a claim of loss, and acts throughout as the mediator between the assured and the company.

Brokers are rarely found except in large cities. In New York they produce virtually all the contracts, for the demand for insurance is so concentrated and has assumed such tremendous proportions that insurance is bought rather than sold. The producer represents the buyer, and remains free of company affiliation in order to use the assured's concentrated bargaining power to its best advantage when dealing with the various companies.

The production process is the same when the contract is produced in one state to cover risks in another. Richmond agents produce insurance to cover risks in other parts of Virginia and in other states, and New York brokers produce contracts to cover exposures in all parts of the country. In fire insurance, it has been the custom for many years for the producer to associate with the contract and to split the commission with an agent who does business in the vicinity of the risk. There is no such custom in the casualty and surety business; a producer of casualty or surety contracts covering exposures in remote places usually relies exclusively on the company to service the contract, and a New York broker generally places the insurance with the company best able to do so. For this reason, a producer seldom insures against a risk with a company not admitted to do business in the state where the exposure exists.

Servicing the Contract

One of the most important services afforded assured is what is known as "servicing the contract," that is, the dis-

covery and elimination of unsafe conditions, whereby the question of loss and cost of insurance is diminished. For this purpose, the insurance company maintains a staff of engineers who inspect the risks covered by the company. The producer not only ascertains whether the assured is receiving proper attention from this servicing personnel, but also makes his own investigations and recommendations in order to reduce the client's rating and expense. These services by brokers and agents are an essential part of the production process in meeting the competition for business.

Field Supervision

Another essential part of the production process is known as "field supervision." The companies employ field supervisors to stimulate and guide the activities of local producers, to accept or reject orders for contracts from producers, to underwrite, prepare and check contracts, to collect premiums and generally to represent the company in a particular territory. The two major classes of field supervisors are: (1) The general agent, who is licensed as a producing agent and is compensated solely by commissions based on premiums on contracts made by him or by producers appointed by him and acting under his supervision. In New York City, where most of the contracts are produced by brokers, the general agents do not appoint producers, for it is more profitable not to compete with brokers but to underwrite the insurance produced by them. General agents are men of knowledge and experience who devote their full time to the business. In Virginia, the general agents produce the bulk of the local business. (b) The branch office manager or salaried company representative who has the same powers and duties as the general agent, but is compensated by a salary and receives no commission for producing business. Whenever a branch manager negotiates a policy directly with an assured, the rule of the National Association of Insurance Agents, in which most insurers have acquiesced, requires that the contract be closed through one of the manager's commission agents who is paid the full producer's commission. The manager's function is to develop his ter-

ritory through ordinary producing agents and to supervise and assist them in the production of desirable business.

Production Cost

The "production cost" of getting the business is divided into two factors: (a) "Acquisition Cost", or the commission paid the producing agent or broker. This commission, which varies in amount and is on the average of 13.5% of the premium, is normally the only compensation that the producer receives. It is allocated as the recipient sees fit. No stock company will negotiate a contract directly with an assured without paying a producer's commission either to a broker or a non-salaried agent. (b) "Field Supervision Cost", that is, the amount paid the general agent for field supervision, and the limit which the company may spend for maintaining its branch offices. This factor is usually about 6.5% of the premium. When a general agent produces a contract, he is given the entire production cost. When a broker, solicitor or other commission agent produces a contract, he receives the acquisition cost, and the general agent or branch manager under whose supervision or within whose territory the producer is working receives the field supervision cost. The maximum amounts which may be paid these various individnals are regulated by an association known as the Asquisition Cost Conference, to which nearly all casualty and surety companies belong.

Non-resident Production of Contracts Covering Virginia Risks

The practices described are followed in the production of policies outside Virginia to cover risks in that state. The statutory restrictions upon this business form the crux of this suit. From 10 to 20% of the total premiums of each company plaintiff for Virginia coverage is paid on contracts produced outside of Virginia, i. e., negotiated, ordered, underwritten, prepared, checked, executed, issued and delivered outside of Virginia. During 1937 twelve of the company plaintiffs received premiums of $410,967.62 on policies of Virginia coverage produced outside the state, and paid commissions of $70,860.96 to non-residents for the production

thereof. Ten of these companies (the figures for the other two are not available) during the first half of 1938 received $183,727.38 for such policies, and paid $31,635.53 to non-residents for this production. The total premiums paid to the plaintiff companies during 1937 on contracts produced outside Virginia amounted to approximately $1,371,574.

The party assured by a policy produced outside of Virginia is occasionally a natural person who keeps his records and manages his business outside the state, and has interests in Virginia and elsewhere. But ordinarily, the assured is a large national corporation, incorporated in any of the states, with its central office in New York, Chicago or some other great business center. One company plaintiff insures a mercantile corporation against the risk of public liability arising from the operation of 258 stores scattered throughout Virginia. Nation wide manufacturers, distributors, financial institutions, contractors, dairy companies, public utilities and others purchase contracts outside of Virginia to cover exposures which they have in that state. These contracts are produced almost exclusively by brokers operating in large cities where the national corporations have their principal offices, and the great majority of this business is produced in New York City, which has become the center for the insurance business in this country. Many of these out-of-state producers are licensed by Virginia as non-resident brokers.

Practically all of the policies produced outside Virginia and insuring persons or property therein are what may conveniently be called multiple-coverage, hotpotch or master policies, for the reason that they insure against numerous exposures of the same type which are usually situated in other states as well as Virginia. It is unusual for different lines of insurance, such as fire, workmen's compensation, automobile or burglary, to be combined in the same contract.

It is as important that the insurer be licensed to do business in Virginia when a contract for Virginia coverage is produced in another state as when it is produced by a resident agent. The fact that a company is licensed to do business in the state of coverage is an important factor in the placing of insurance, for if the insurer does not have such

a license, the assured loses the benefit of all company services in the state of the exposure, which is the very place where he needs them most, and the assured also can not sue to recover a loss in that state.

The Reason for Out-of-State Production

An individual non-resident, subject to exposures in Virginia, is likely to purchase his insurance through a friend at his residence or place of business. The officers of a national corporation are also influenced by this personal element; but the chief reason for the concentration of their insurance buying in New York or other large center is the reduced cost. A great number of large corporations employ high salaried officers, whose sole function is to handle their insurance because advantages inhere in the concentration of insurance buying as in the mass purchase of commodities. The average rates for fidelity insurance is 50¢ per hundred; but if a bond for millions of dollars is purchased to cover the employees of a nation-wide chain of stores, then the rate is 25¢ or 30¢ per hundred.

The solution of the insurance problems of an assured subject to numerous exposures is greatly facilitated by the centralization of insurance buying. It is easier to insure against many risks by the procurement of one policy and the payment of one premium therefor; and the assured is better able to place the responsibility for proper coverage of its risks in its insurance manager.

Other conveniences and economies result from the centralization of insurance buying. In many localities of exposure, there are no resident agents capable of handling a large corporation's insurance. Such a corporation does not have in the localities of its exposures representatives authorized and qualified to attend to its insurance matters, or the records necessary for transacting the business. Multiple coverage policies are usually rated on the accident and loss record for the combined risks, and such rating cannot be determined properly if each exposure must be insured separately through local resident agents.

The controlling reason, however, for the out-of-state production of hotch-potch or master policies covering persons

or property in Virginia is the lower rate obtained for Virginia risks. This result is accomplished by some form of special rating, e. g. "retrospective rating", whereby the premium is retroactively reduced or increased, according to the favorable or unfavorable experience of the risk; "experience rating", which is based upon the application of an inflexible formula to the history of the losses of the assured, or "equity rating", which involves some flexibility of judgment in the formulation of rates lower than those developed by a fixed formula, and usually includes some reduction in the amount of the producer's commission. Reduction in the cost of the insurance of a large corporation is sometimes secured by inviting the brokers to make competitive bids. The broker usually gets the business who offers the best price, and he frequently contributes to this result by reducing the customary commission. In general, the lower premiums involved in the "rating" and "pricing" of policies of large corporations are the result of quantity purchasing, improved loss experience from scientific servicing of risks, and intelligent underwriting of combinations of coverages.

Effect of Non-Resident Production in the State of Virginia

Insofar as inspection and engineering services preceding or accompanying the formation of a contract covering a Virginia risk are concerned, and insofar as the services of inspectors and adjusters are required in case of loss after the execution of the policy, there is no difference between a contract produced within and a contract produced without the state. The ability of the company to perform the services in the state of coverage necessarily affects the placing of the insurance.

The production of from 10 to 20% of Virginia coverage outside the state is of course attended by a loss of business and of revenue by insurance agents resident in Virginia. In 1937 $9,143,833 was paid in premiums on casualty and surety contracts covering Virginia risks. Producers' commissions at 13.5% amounted to $1,234,417; and assuming that 15% of the coverage was produced outside the state, the resident agents of Virginia lost $185,161 which they

would have earned if the business had been produced within the state.

Producers in New York and other large business centers, by reason of their location, have a great competitive advantage over the Virginia agents. The latter do not have the opportunity to acquire the information and experience that will acquaint them with the insurance market and render them expert in the rating and underwriting of multiple risks. A statutory requirement compelling the association of the resident agent with all Virginia risks would tend to overcome the handicap under which he now labors.

Under present out-of-state production technique, Virginia casualty and surety companies, not doing business on a national scale, cannot compete with large foreign corporations for 10 to 20% of the insurance on persons and property within the state, since the small domestic companies cannot offer reduced premiums on hot-potch and interstate contracts with Virginia coverage included.

The interests of Virginia residents, merchants, industrialists and business men, who are not subject to numerous risks in various states, are also affected. These persons compete with national corporations for Virginia business and are handicapped by being required to pay more for their Virginia insurance than their large competitors who buy hotchpotch policies outside the state. The local grocer, for example, pays more for his insurance than does the chain store.

Out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of the state. Virginia has many statutes relating to the casualty insurance and surety business. No foreign corporation may make such contracts on persons or property in Virginia unless it obtains a certificate of authority to transact business from the Virginia Corporation Commission by filing two copies of its charter, paying the requisite entrance fee and fulfilling certain other statutory requirements. Virginia Code Sections 3847 and 4176. The Commission may prevent any insurance or surety company, which is insolvent or fails to comply with any provision of law, from doing business in Virginia. Section 4180. No insurance

company or agent shall pay, or allow, as an inducement to have any contract of insurance or surety issued, any rebate of premium or any special favor or inducement not specified in the contract. Section 4222-c. Every company issuing workmen's compensation or automobile insurance or contracts of surety must file schedules of its rates with the Corporation Commission and procure its approval of the same. If, upon a hearing, the Commission feels that the rates proposed by any company are unfair, unreasonable or discriminatory, then it may prescribe a different schedule of rates. Sections 1887 (75), 4326-a-1, 4350-3. In these three lines where rates for Virginia coverage are fixed by law, "equity" and "retrospective" ratings are not allowed. Automobile liability policies issued to public carriers must be filed with the Corporation Commission, and workmen's compensation policies must be filed with the Industrial Commission. All of these laws apply to insurance produced outside the state as well as to contracts produced within.

The out-of-state production of Virginia coverage makes it difficult to enforce certain of these laws, particularly those dealing with insurance rates. A good example of virtual nullification of Virginia's rate fixing statutes is a contract covering risks in various states and rated on an interstate basis, such as a policy covering risks in Virginia and West Virginia. If West Virginia does not regulate the rate, it is easy to dilute the Virginia fixed rate by setting an arbitrary figure as the price for the West Virginia coverage. In the same way, retrospective rating applied to the West Virginia coverage can in effect operate to reduce the premium for the Virginia coverage. Thus an interstate rate may result in great savings to the assured, in spite of the fact that it is against the law of Virginia for the assured to be granted such reductions. It is equally difficult to enforce the law (Code Section 4222-c) against rebates and special favors when the policy is produced beyond her borders. In a contract covering risks in Virginia and other states, it is easy to grant a rebate and attribute it to risks in states other than Virginia when, in reality, but for the rebate or favor, the contract would not have been purchased. In the absence of some one within her jurisdiction

connected with the production process, it is difficult for Virginia to prevent violations of these statutes.

The Probable Effect of the Resident Agent Requirement of the Act of 1938

In estimating the effect of the Act upon the insurance business, the experience of Virginia, under prior acts passed for the same general purpose should be considered. The Acts of Virginia of 1895-6, p. 258, required in effect that contracts for fire insurance on property in Virginia should be made through resident agents. The Acts of 1902, p. 738, made similar provision for casualty and surety contracts covering Virginia risks; and the codification by the Acts of 1906, p. 122, Sections 34 and 38, required all insurance on persons or property in the state to be placed through resident agents. In 1921, the foregoing legislation was interpreted by the State Insurance Commissioner to require that all insurance on persons or property within Virginia should be issued under a policy separate from insurance on persons or property in any other state; that if the Virginia risk should be covered under a general cover contract form, it should include only Virginia property; that the rates should be those applicable to risks covered as published by the Rating Bureau of which the insurer was a member; and that the policy should be issued through and signed by a resident agent who should receive the usual commission, but this last provision did not apply to company employees who received a fixed salary. See also the Acts of 1936, p. 169.

Prior to the Act of 1938, the resident agent who countersigned a policy produced outside the state performed no useful function in the production, underwriting or servicing of the contract. The plaintiffs' brief states: "Companies have never observed the mandate of the statute not to make contracts (outside of Virginia) except through licensed Virginia agents. * * * When, because of the compulsion of the law of a state of coverage, the company must secure the countersignature of a licensed agent there, he may countersign only a 'law rider' or a 'countersigning endorsement'. He may sign one of a number of 'underlying contracts' retained by the company, while a 'master contract'

is delivered to the assured." Customarily, contracts produced outside of Virginia have been countersigned by the general agents and branch office managers without compensation. They have not performed any of the services habitually offered the assured by a resident producer; but these services have been rendered by the non-resident producer and by the companies' salaried employees, such as engineers and adjusters, particularly the latter, when the matter has been one that could not be handled by a producer remote from the locality of the coverage. Prior to the Act of 1936, the Virginia resident agent statute requirements have had no real effect on the production of the contracts.

The Act of 1938 is more drastic than its predecessors, in that it requires that the resident agent be paid and retain at least one-half of the customary commission, and forbids a salaried representative of the company to countersign the policy. The Act will not affect the production of insurance contracts covering a single or a small number of risks, since these are placed almost entirely through resident agents, but it will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent. The amounts now paid the out-of-state producer are not shown to be excessive, and it is not to be expected that he will render the same services for one-half of the compensation.

Whether or not, in view of the Act of 1938, Virginia risks will still be covered by master policies produced outside the state depends on whether the advantages for purchasing the insurance in New York or other business center will outweigh the increased cost of the Virginia insurance. The probability is that in many cases, the saving will still exceed the increased expense unless the Act prevents the cutting of rates denounced by the Virginia statutes. For example, if the usual rate of 50¢ per hundred on a fidelity

bond is reduced to 25¢ per hundred in the case of a Five Million Dollar fidelity bond of a chain store organization, as the evidence indicates, the reduction in cost of the Virginia coverage would far exceed one-half of the usual commission which the resident agent is required by the statute to retain.

Under the practice prevailing prior to the passage of the Act of 1938, the countersigning by a salaried representative of the company of a policy produced outside the state was only a perfunctory act, unaccompanied by any service to the assured or by any compensation to the signer. It does not follow that the same practice will prevail under the present statute which requires the retention of one-half of the commission by the resident agent. On February 13, 1939 the Virginia Association of Insurance Agents, Inc. passed a resolution with reference to the Act wherein it was declared that in all cases where a Virginia agent is associated in writing a Virginia fire, casualty or surety policy, he shall familiarize himself with all the pertinent facts relating thereto, examine the policy to ascertain whether it is correct as to rate and coverage and best adapted to the needs of the assured, and throughout the life of the policy render the same obligation to the assured with respect to servicing the contract as if the Virginia agent alone had negotiated the contract. On February 27, 1939, the chief examiner of the Virginia Insurance Bureau made an interpretation of the statute, wherein he held that a Virginia resident agent, countersigning a contract, has imposed upon him ipso facto "the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff in connection therewith, as customarily applied in cases where the resident agent himself negotiated a similar contract."

This resolution and this interpretation were offered in evidence by the defendant, and were objected to by the plaintiffs as nothing more than self-serving arguments as to the meaning of the statute, promulgated after the institution of the pending suit on November 10, 1938. We are in accord with the view that these documents should have no weight in determining the controversy, except insofar as they con-

stitute arguments on the part of the defendants as to the interpretation of the statute, and its probable effect. Considered in this way, they are not without some persuasive force. It is true that the plaintiff companies and the assureds have been content with the prior practice, and have felt no desire or need for the services of the local agent in the production and servicing of master policies; if the local agent must be paid one-half of the commission, he will doubtless be called upon to render such services as he may be qualified and able to perform, even though the statute merely provides that the contracts shall not be made except through resident agents and except with their countersignature thereon. Such agents could be of assistance in checking the coverage and premium, servicing the contract, adjusting claims of loss, and acting in general as the mediator between the assured and the insurer in the locality of the exposure.

The plaintiff objected to evidence offered by the defendant as to certain customs in the fire insurance business with reference to a payment of a share of the commission to the Virginia agent in case of a contract produced outside the state covering a location therein. From 5 to 10% of the amount of the premium has been customarily paid to the local agent, regardless of the connection or lack of connection of the agent with the transaction. In our opinion, the evidence was material, and the objection should be overruled. Conditions with reference to casualty and surety insurance differ from those that prevail in fire insurance, but nevertheless the evidence of the custom voluntarily adopted in one line has some bearing on the reasonableness of the Act which imposed a similar custom as a duty on another line of the same general business.

The plaintiffs contend that the statute is invalid because it attempts to regulate the making, outside of Virginia, of contracts of insurance, in that it provides that insurance companies shall not make contracts of insurance or surety on persons or property within the state except through regularly constituted and registered resident agents; and that no resident agent may write, countersign, issue or deliver any such contract, upon persons or property within the

state; unless there shall be collected the full premium on the contract; and that the resident agent shall be entitled to, and shall receive the usual commission, and shall not allow or pay to any licensed non-resident insurance broker more than 50% of the commission. It is said that the State of Virginia, by the passage of the Act which applies to contracts executed without the state as well as contracts executed therein, assumes the right to exercise beyond its territorial limits legislative authority which exceeds the limitations imposed by the federal constitution; and that the Act is not saved by the fact that the contracts of insurance to which it relates cover exposures and involve acts of performance within the state.

It is a well established general principle that the due process clause of the Fourteenth Amendment "denies to a state any power to restrict or control the obligations of contracts executed and to be performed without the state, as an attempt to exercise power over a subject matter not within its constitutional jurisdiction"; and this is true although one of the contracting parties is within the state. Alaska Packers Ass'n *v.* Commission, 294 U. S. 532, 540. This principle has been applied to statutes affecting contracts of insurance executed beyond the confines of the state; Allgeyer *v.* Louisiana, 165 U. S. 578; St. Louis Compress Co. *v.* Arkansas, 260 U. S. 346; New York Life Ins. Co. *v.* Head, 234 U. S. 149, 161; New York Life Ins. Co. *v.* Dodge, 246 U. S. 357; Fidelity & Deposit Co. *v.* Tafoya, 270 U. S. 426; Connecticut General Co. *v.* Johnson, 303 U. S. 77. It has been held that the mere residence within the state of an assured under a life policy executed outside the state, or the mere existence of property in the state covered by a policy executed outside the state, does not of itself empower the state to regulate or modify the terms of the contract or justify the imposition of tax on premiums. New York Life Ins. Co. *v.* Dodge, 246 U. S. 357; Aetna Life Ins. Co. *v.* Dunken, 266 U. S. 389; St. Louis Compress Co. *v.* Arkansas, 260 U. S. 346; Palmetto Ins. Co. *v.* Connecticut, 272 U. S. 295, 304; Compania De Tabacos *v.* Collector, 275 U. S. 87. But it does not follow that the state has no jurisdiction under any circumstances over contracts of insurance made outside of the territory which relate to subject matter within

its borders or affect the interests of its citizens. The border line between what is permissible and what is not is not always easy to draw; but specifically, it has been held that a state tax upon premiums received by a foreign insurance company from business done without the state may be assessed upon premiums paid to the company outside the state by the residents thereof. The tax was held to be a tax upon the privilege of doing business within the state. Equitable Life Society *v.* Pennsylvania, 238 U. S. 143. The court said (146-7):

"It being established that the relation of the foreign company to domestic policy holders constituted doing business within the meaning of the statute, the question is whether the company may be taxed in respect of it, in this way, whatever it may be called. We are dealing with a corporation that has subjected itself to the jurisdiction of the State; there is no question that the State has a right to tax it and the only doubt is whether it may take this item into account in fixing the figure of the tax. Obviously the limit in that regard is a different matter from the inquiry whether the residence of a policy holder would of itself give jurisdiction over the company. The argument of the state court is that the Company is protecting its insured in Pennsylvania equally whether they pay their premiums to the Company's agent in Philadelphia or by mail or in person to another in New York.

These are policies of life insurance and according to the statement of the plaintiff in error are kept alive and renewed to residents of Pennsylvania by payments from year to year. The fact that the State could not prevent the contracts, so far as that may be true, has little bearing upon its right to consider the benefit thus annually extended into Pennsylvania in measuring the value of the privileges that it does grant. We may add that the State profits the Company equally by protecting the lives insured, wherever the premiums are paid. The tax is a tax upon a privilege actually used."

This case was followed by Compania De Tabacos *v.* Collector, 275 U. S. 87, where the court sustained a tax upon

premiums from fire insurance policies on property within the Philippines, which premiums were received by a foreign insurance company licensed to do business in the islands. The court said (p. 98):

"Does the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines, they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the imposition upon the assured of a tax of one per cent upon the money paid by it as a premium to the London Company? We may properly assume that this tax, placed upon the assured, must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment, and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under Equitable Life Society *v.* Pennsylvania, 238 U. S. 143."

See also Palmetto Ins. Co. *v.* Connecticut, 272 U. S. 295. Compare, Hartford Indemnity Co. *v.* Delta & Pine Land Co., 292 U. S. 143, where it was held that a statute of limitations of the state where the breach occurred and the suit was brought upon a contract of suretyship, did not supersede the limitations specified in a valid contract of insurance made outside the state covering defalcations anywhere, since the performance in the state of suit involved at most only the casual payment of money and a state may not draw to itself control over contracts validly made elsewhere regardless of the relative importance of the interests of the forum with those created at the place of contract. See also Alaska Packers Ass'n *v.* Commission, 294 U. S. 532, 547. The test is this, according to Mr. Justice Brandeis dissenting in New York Life Ins. Co. *v.* Dodge, 246 U. S. 357, 382-3:

"Is the subject-matter within the reasonable scope of regulation? Is the end legitimate? Are the means appro-

priated to the the end sought to be obtained? If so, the act must be sustained, unless the court is satisfied that it is clearly an arbitrary and unnecessary interference with the right of the individual to his personal liberty."

It will have been observed that in the aforegoing cases, it was considered an important circumstance if the insurance company, like the plaintiff companies in the pending case, was doing business under license from the state whose legislation was the subject of attack. This feature was emphasized in Bothwell *v.* Buckbee, Mears Co., 275 U. S. 274, which concerned a policy of strike insurance covering a risk in Minnesota and written by an insurance company not licensed to do business therein. The contract required the performance of certain acts, and gave the company the right to do other acts within the state, all of which constituted activities of the insurance business which an unlicensed company was forbidden to perform. These circumstances, the court held, justified the refusal of the state to enforce the contract.

In Equitable Life Ins. Society *v.* Pennsylvania and Compania De Tabacos *v.* Collector, supra, a tax on premiums was sustained because of activities of the insurer in connection with the contract, performed or contemplated, constituted an exercise of its license to do business in the state. These authorities are pertinent on the question of jurisdiction although some of them relate to taxation with which we are not concerned in the pending case, for taxation is regulation. Compania De Tabacos *v.* Collector, 275 U. S. 87, 95, and whatever a state in the exercise of its police power may regulate, it may subject to taxation. Great Atlantic & Pacific Tea Co. *v.* Grosjean, 301 U. S. 412, 425, 426.

As it has been shown in the findings of fact that the contracts of the plaintiff companies on persons or property within Virginia call for or contemplate the performance of certain acts within the state, and it follows that the state has power to regulate them, the question is whether the statutory requirement that the insurance contract be made through a resident agent, who shall be paid at least one-half

the commissions, has a reasonable relation to the risk covered by the contract and to the performance within the state of the obligations undertaken by the insurer.

The plaintiffs contend that the sole purpose of the statute is to profit the resident agent, to the detriment of the non-resident broker, the salaried resident agent, the insurance company and the insuring public. That one purpose and effect is to increase the income of the resident agent is undeniable, but we think that that is not the only purpose or probable effect. The important object of the statute is to require that all policies shall be placed by a resident agent, who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract. Of this main purpose the requirement of countersignature by the resident agent is only a minor and incidental part, of little importance except as indicating that the resident agent shall become an active factor in the business, especially when coupled with the major requirement that he shall be entitled to the whole commission of which he must retain one-half. The latter requirement, it is reasonable to conclude, will probably lead to greater participation on the part of the resident agent and he will be expected to render to the company and to the assured all the services of which he is capable. The tendency will be to create a more efficient agency force with the result that the local interests of the insured will be better served.

It is of equal importance that the creation of greater responsibility on the part of the resident agents, whom the state can reach and control, will assist the state in putting into effect statutes passed for the regulation of the insurance business. It will not be so easy for the foreign insurance companies, the non-resident brokers and the insured to evade the prohibitions against rate cutting and rebating of commissions, designed to protect the insured resident in Virginia and the local insurance companies against the great advantages of business of national scope. Information as to illegal practices, which the resident agent will acquire, may be made available to the state. The effects of the statute may be less favorable than this prognosis indicates, but it is not an unreasonable one, and in any event, the burden

is on those who attack the statute to show that it is devoid of legitimate purpose.

We conclude that Virginia is not without jurisdiction to pass a statute affecting the production of out-of-state contracts issued by companies licensed to do business in the state. Is the method adopted by the statute of 1938 so arbitrary and unreasonable as to be beyond its authority, that is to say, is it a proper exercise of the police power of the state which may be used to promote the public health, morals, safety, convenience and prosperity? *Eubank* v. *Richmond*, 226 U. S. 137, 142; *Nebbia* v. *New York*, 291 U. S. 502-3; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379. We think that the Act is within the power of the state. The plaintiffs complain of the exaction of one-half of the commission as the share of the resident agent; but it cannot be denied that such an agent can render services of substantial value. The actual practice in the fire insurance business in Virginia and elsewhere in the United States is of great significance in this respect. For many years it has been customary for fire policies to be signed by the resident agent, and he has been paid the full commission if he has negotiated the policy, and one-half commission if he has not negotiated the policy. In view of this experience, how can it be said that the application of a like rule to the casualty and surety business is arbitrary?

The provision for countersignature needs little discussion. Such a requirement is quite common throughout the United States. The present statutory provision that the signature of a commission rather than a salaried agent shall be affixed to the policy is imposed as a safeguard to make certain that the commission agent, whose cooperation in the enforcement of the insurance statutes is desired, shall have knowledge of the issuance of policies and of his right to share in the commissions and in the subsequent activities under the contract. The salaried agent has no real complaint of discrimination against him since it is admitted that his association with business originating outside of the state has been entirely nominal and perfunctory in the past, unaccompanied by any real share in the business, or any compensation for his signature.

We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact, the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business.

These circumstances are not without material bearing in considering the reasonableness of the statute; but when they are weighed against the considerations above outlined, the conclusion still remains that the statutory provisions are not so unreasonable and arbitrary as to render the legislation void. It is for the legislature of the state to determine what economic policy will best serve the interest of its citizens, and to this end it may regulate or even prohibit a particular type of business in order to promote what it deems to be the public welfare. In passing upon the right of the state to impose on chain stores a graduated tax which increased in rate in proportion to the number of stores, the Supreme Court had this to say in *Great Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 425:

> "* * * In the exercise of its police power the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in such manner as to abate evils deemed to arise from its pursuit. Whatever a state may forbid or regulate it may permit upon condition that a fee be paid in return for the privilege, and such a fee may be

exacted to discourage the prosecution of a business c
to adjust competitive or economic inequalities. Taxa
tion may be made the implement of the exercise of th
state's police power; and proper and reasonable dis
crimination between classes to promote fair competi
tive conditions and to equalize economic advantages i
therefore lawful.

If, in the interest of the people of the state, the legisla
ture deemed it necessary either to mitigate evils of com
petition as between single stores and chains or to neutralize
disadvantages of small chains in their competition with
larger ones, or to discourage merchandising within the
state by chains grown so large as to become a menace to
the general welfare, it was at liberty to regulate the matter
directly or to resort to the type of taxation evidenced by
the Act of 1934 as a means of regulation. The appellants,
by incorporating in some other state, or by spreading their
business and activities over other states, cannot set at
naught the public policy of Louisiana. The claim is, es-
sentially, that even if local evils flow from the appellant's
methods the state cannot control those evils because its
power is limited to conditions created by the members of
the chain found within the State. The conclusion is that
the state must treat these stores as if they were something
different from what they really are, since to do otherwise
would be to reach beyond the borders of Louisiana for the
measure of the tax. The argument answers itself. The
policy Louisiana is free to adopt with respect to the busi-
ness activities of her own citizens she may apply to the
citizens of other states who conduct the same business within
her borders, and this irrespective of whether the evils re-
quiring regulation arise solely from operations in Louisiana
or are in part the result of extra-state transactions. It
is not a denial of due process to adjust such license taxes
as are here involved to meet the local evil resulting from
business practices and superior economic power even
though those advantages and that power are largely due
to the fact that the taxpayer does business not only in
Louisiana but in other states."

In their original brief the plaintiffs refer to the decision in Hartford Steam Boiler Inspection & Insurance Co. *v.* Harrison, 301 U. S. 459, where it was held by a divided court upon petition and answer of the parties, and without evidence, that a Georgia statute, relating to insurance companies, was unconstitutional because it discriminated arbitrarily and unreasonably against stock companies by requiring them to write the policies through commission agents, while permitting mutual companies to write policies through salaried agents. But the plaintiff insurance companies in their brief pointed out that no evidence has been offered in the pending case to show that there is such a similarity between the various classes of insurance companies as makes it arbitrary to classify them differently, and hence, the plaintiffs placed no reliance upon the decision referred to, and make no attack upon the Virginia statute because its provisions apply to stock, casualty, insurance and surety companies, and the salaried agents thereof, but do not apply to life, title, ocean marine or mutual insurance companies or their salaried agents.

The reference to mutual insurance companies in the Virginia Act is found in section 4222-a, where it is provided that no state agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, covering persons or property within the state, except contracts of life, title and ocean marine insurance; and it may seem that this provision of the statute at least should be declared invalid. But we are satisfied that the injunction prayed should not on this account be granted. It was stated in paragraphs 9 and 11 of the complaint that the plaintiffs do not claim that any provision of the Virginia Act violates the rights of the company plaintiffs or of the agent plaintiffs, because it denies them the equal protection of the laws, except insofar as the Act is designed to promote the interests of the general body of the Virginia stock, fire, casualty and surety commission agents, with the view to unjustly enrich them at the expense of the salaried agents, the companies, the insuring public and the Commonwealth of Virginia. No evidence indicating un-

reasonable or arbitrary discrimination in favor of mutua
companies has been submitted. On the other hand, th
evidence shows that mutual companies, with immaterial ex
ceptions, do not have commission agents, and the inclusio
of such companies within the regulatory provisions of th
statute would be meaningless unless they were required t
operate on different principles. It is the boast of stoc
companies that the salaried agent of the mutual compan
is not able to afford as valuable a service to the insurin
public as the commission agent of the stock company, sinc
the latter is less the representative of the company, whos
policies he places, than he is the representative of the in
sured. The plaintiffs "cannot complain if in fact the dis
crimination embodied in the law is but a perpetuation of a
classification created and existing" by their own acts, Bor
den's Co. *v.* Ten Eyck, 297 U. S. 251, 263, and in fact they
make no complaint in this respect.

Our conclusions of law are that the requirements imposed
by the Act of 1938 upon the plaintiffs with regard to con
tracts of insurance made outside of Virginia are not beyond
the jurisdiction of the state; that the provisions of the Act
are not arbitrary and unreasonable or in violation of the
federal Constitution, and that the prayers for interlocutory
and permanent injunctions should be denied and the bil
of complaint should be dismissed.

FILE COPY

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592.

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, *et al.*,

Appellants,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER and LESTER HOOKER, etc., *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE APPELLANTS.

JOHN LORD O'BRIAN,
ANDREW D. CHRISTIAN,
Counsel for Appellants.

WILLIAM I. MOREY,
WILLIAM P. STEWART,
ERNEST J. BROWN,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Statutes Involved	2
Questions Presented	3
Statement of the Case	4
1. Parties	4
2. Proceedings Below	5
3. The Facts	6
A The purpose of the statute	6
B The producer of the contracts	6
C The making and issuance of contracts produced outside Virginia	8
D The acts and obligations under the contracts	9
E The assureds under the contracts produced outside of Virginia	10
F The "usual and customary" commission	11
G Effect of the statute upon the plaintiffs	12
Specification of Errors	16
Summary of Argument	18
Argument:	19
I. The Virginia Statute Prohibiting the Corporate Plaintiffs from Making, Outside of Virginia, Contracts of Insurance and Surety Covering Persons and Property in Virginia, is Unconstitutional and Void	19
II. Section 4226 (a) of the Code of Virginia, Prohibiting Plaintiffs from Making any Contract of Insurance or Surety on Persons or Property in Virginia if Solicited or Negotiated out of Virginia by a Person not Licensed by Virginia, Denies to the Plaintiffs Due Process of Law, and is Unconstitutional and Void	32

PAGE

III. The Requirement that a Countersigning Resident Agent shall be paid the Same Usual and Customary Commission as that paid to Another for Producing the Contract Deprives the Corporate Plaintiffs of their Property without Due Process of Law, and is therefore Unconstitutional and Void 36

IV. The Prohibition of Section 4222 (a) against Salaried Agents Countersigning Deprives the Corporate Plaintiffs of their Property and the Individual Plaintiffs of their Liberty and Property without Due Process of Law and Denies the Individual Plaintiffs the Equal Protection of the Laws and is therefore Unconstitutional and Void 45

V. Conclusion 48

Appendix: Code of Virginia Citations 49

Cases:

Aetna Life Insurance Company v. Dunken, 266 U. S. 389 .....19, 20, 25

Allgeyer v. Louisiana, 165 U. S. 578 .....19, 21, 25

Boseman v. Connecticut General Life Insurance Company, 301 U. S. 196 .....20, 22, 25, 29, 30

Compania General de Tobagos v. Collector, 275 U. S. 75 30

Bothwell v. Buckbee, Mears Co., 275 U. S. 274...24, 26, 27 28, 29, 30

Equitable Life Society v. Pennsylvania, 283 U. S. 143 30

Fidelity & Deposit Company v. Tafoya, 270 U. S. 426 .....19, 21, 24, 25, 33

German Alliance Ins. Co. v. Lewis, 233 U. S. 389 25

Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412 31

Hartford Accident & Indemnity Company v. Delta & Pine Land Company, 292 U. S. 143...19, 20, 22, 25, 30

PAGE

Home Insurance Company v. Dick, 281 U. S. 397 . . . . . 20, 22, 30
Louisville Gas & Electric Company v. Coleman, 277 U. S. 32 47
Morehead v. New York, 298 U. S. 587 39
New York Life Insurance Company v. Dodge, 246 U. S. 357 39
New York Life Insurance Company v. Head, 234 U. S. 149 . . . . . 20, 22, 24, 25
O'Gorman & Young, Inc. v. Hartford Fire Ins. Co., 282 U. S. 251 . . . . . 25, 44
St. Louis Compress Company v. Arkansas, 260 U. S. 346 . . . . . 19, 21, 22, 25
Smith v. Texas, 233 U. S. 630 . . . . . 46, 47
West Coast Hotel Company v. Parrish, 300 U. S. 379 39
Statutes: Judicial Code §238 (28 USCA §345) 1
§266 (28 USCA §380) 1, 5
Code of Virginia §4180 2
§4222 (a) 2, 3, 4, 5, 18, 30, 31, 32, 36
§4223 2
§4226-a 2, 3, 5, 18, 26, 32, 36
§4235 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592.

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, *et al.*,

Appellants,

vs.

THOS. W. OZLIN; WILLIAM MEADE FLETCHER and LESTER HOOKER, etc., *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR THE APPELLANTS.

Opinion Below.

The opinion of the three-judge statutory District Court (R. 43-65) is reported in 29 Fed. Supp. 71.

Jurisdiction.

This appeal is taken pursuant to Sections 238 and 266 of the Judicial Code as amended (Sections 345 and

380 of Title 28, U. S. Code). The appeal was allowed by order entered November 3, 1939 (R. 92-93). Reference is made to the Statement as to Jurisdiction filed under Rule 12, for a concise statement of the grounds on which the jurisdiction of this Court is invoked. This Court noted probable jurisdiction on January 8, 1940.

Statutes Involved.

The statutes involved are amendments of Subsection (a) of Section 4222 and Section 4226-a of the Code of Virginia, being parts of Chapter 218 of the Acts of the General Assembly of Virginia of the Session of 1938, effective June 21, 1938 (Acts of 1938, p. 343). For violation of the provisions of these statutes, fines and penalties are imposed by Sections 4180, 4223 and 4235 of the Code of Virginia. The pertinent provisions of the statutes will be found in the Appendix.

Section 4222(a) forbids insurance companies authorized to do business in Virginia to make contracts of insurance or surety "on persons or property herein," except through persons who meet the statutory definition (Section 4221-a) of "resident agents" and are licensed as such by Virginia under Section 4235. Section 4222(a) also forbids insurance companies authorized to do business in Virginia to write, issue, or deliver such contracts unless duly countersigned in writing by a resident agent, and forbids a salaried representative of such company to countersign such contracts. Section 4226-a requires that a resident agent countersigning a contract shall receive "the usual and customary" commission allowed thereon, and forbids him to pay or allow any part of the commission to a non-resident broker not licensed by Vir-

ginia as a non-resident broker, and to pay or allow more than 50% of the commission to a non-resident broker where duly licensed as such by Virginia.

A non-resident broker is, by this Section, defined as any non-resident person, firm, or corporation who solicits for compensation, directly or indirectly to be derived therefrom, contracts of insurance or surety on persons or property located in the State. In order to become a "licensed non-resident broker," a non-resident must apply for and receive a license granted only on terms and upon the payment of a tax.

Questions Presented.

The principal questions presented herein are as follows:

1. Does Section 4222(a) of the Code of Virginia violate the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deprive the corporate appellants of property without due process of law by requiring that a contract of insurance or surety upon persons or property within Virginia shall be made through a resident Virginia agent and thus in effect prohibiting the corporate appellants from making such a contract in a State other than Virginia?

2. Does Section 4226-a of the Code of Virginia, taken in conjunction with Section 4222(a), violate the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deprive the corporate appellants of their property without due process of law by requiring that they pay to a resident

Virginia agent usual and customary commissions on a contract of insurance or surety made outside Virginia upon persons or property in Virginia?

3. Does Section 4222(a) of the Code of Virginia violate the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deprive the individual appellants of liberty and property without due process of law and deny them equal protection of the laws by denying to them the right to countersign a contract of insurance or surety covering persons or property in Virginia?

Statement of the case.

1. Parties.

The appellants, plaintiffs below and hereinafter referred to as plaintiffs, are thirty-four corporations and three individuals. The corporate plaintiffs are thirty-four foreign or alien stock companies each doing business in many states and licensed to conduct in Virginia the casualty insurance or surety business, or both. The three individual plaintiffs have their residences in Virginia and also their principal places of business as salaried agents and Richmond branch managers of certain corporate plaintiffs. These individuals were licensed by Virginia as resident agents prior to June 21, 1938, the effective date of the statute in question, and since that time have been licensed as special agents or company representatives (Op. R. 44-45).

The defendants are officials of Virginia, charged with the administration of the insurance laws of that State (Op. R. 45).

2. Proceedings Below.

The complaint herein (R. 1-17) was filed in the District Court of the United States for the Eastern District of Virginia on November 12, 1938, praying for a judgment declaring plaintiffs' rights under Sections 4222(a) and 4226-a of the Virginia Code, as enacted by Chapter 218 of the Acts of 1938, and, on the ground of the unconstitutionality of the statute, praying for interlocutory and permanent injunctions restraining the defendants from enforcing it against the plaintiffs.

By order of the District Court entered December 5, 1938, a three-judge court was convened pursuant to Section 266 of the Judicial Code, as amended (Title 28, U. S. Code § 380). The answer of the defendants (R. 22-41) was filed on December 27, 1938. Proof was made by the stipulation of certain facts (R. 93-105) and by testimony taken by deposition, in accordance with the Court's instructions (R. 41-42). Upon the taking of the depositions, objections to the introduction of evidence were noted, to be ruled upon when the depositions were submitted to the Court. Upon submission of the case, briefs and requests for findings were filed.

On September 6, 1939, the Court filed its opinion setting forth therein its findings of fact and its conclusions of law to the effect that the statute in question was not unconstitutional and directing that the prayers for interlocutory and permanent injunctions should be denied and the bill of complaint dismissed (R. 43-65). On October 2, 1939, the plaintiffs filed a motion for a new trial, for the amendment of the opinion and findings and conclusions, and for the making of additional

findings and conclusions (R. 66-79). This motion was denied (R. 79), and on October 6, 1939, a decree was entered denying the relief prayed for by the plaintiffs and dismissing the bill of complaint (R. 79-80). The plaintiffs' notice of appeal (R. 80-81), petition for appeal (R. 81-82), and assignment of errors (R. 82-92) were filed in the District Court on November 3, 1939, and on the same day an order was entered and filed allowing this appeal from the decree dismissing the plaintiffs' bill of complaint.

3. The Facts.

A. The Purpose of the Statute.

The Court below stated that one purpose of the statute is to increase the income of the Virginia resident agents, but that the important object is to compel all contracts covering Virginia risks to be placed by a Virginia resident agent (Op. R. 60-61).

The statute was drawn by the Virginia Association of Insurance Agents, Inc. (R. 348-349, 349-350) which caused it to be introduced in the Legislature in order to "save for Virginia local agents commissions justly theirs" (R. 347, 673). Members of the Association represented to the Legislature that the statute would not affect insurance costs (R. 348, 673, 675), but would bring annually to Virginia agents many thousands of dollars (R. 347, 674-675). The defendants accepted the views of the members of the Association and supported the bill "to get them what they wanted" (R. 557).

B. The Producer of the Contracts.

Contracts of casualty insurance and surety are produced by persons known as "producers" who solicit

the public. The producer is either an agent or a broker licensed by the State in which he acts. He represents the assured in negotiating with the company for the issue of a contract; if he is an agent he may also represent the company in making the contract. The producer must have a sound technical knowledge upon questions of exposure and coverage; he must have the confidence of the assured, particularly when the assured must disclose confidential information concerning his business. The assured is the client of the producer whose success depends upon his salesmanship and his reputation and experience as an insurance man (Op. R. 45). The producer is the sole medium for dealing with the company and the assured as to matters relating to the nature and scope of the coverage (R. 794-798, 833-835, 872). The producer usually controls the selection of the company with which the contract shall be made and may place it in a company not affected by the statute; *e. g.*, a mutual company (R. 121-123, 152-155, 792-793, 859-860, 909).

The production process is the same when the contract is produced in one State to cover risks in another as when it covers in the State of production. Richmond agents produce insurance to cover risks in other parts of Virginia and in other States and nonresident agents and brokers produce contracts to cover exposures in all parts of the country (Op. R. 46).

Practically all contracts produced outside Virginia and insuring persons or property therein, are multiple-coverage contracts covering numerous exposures of the same type located in other states as well as in Virginia (Op. R. 49). Producers in New York and other

large business centers are especially expert in the writing of this business (Op. R. 51). In New York, brokers produce virtually all the contracts, for the demand for insurance is so concentrated and has assumed such tremendous proportions that insurance is bought rather than sold. The broker represents only the buyer. He remains free of company affiliation in order to use the assured's concentrated bargaining power to its best advantage when dealing with the various companies (Op. R. 46).

C. *The Making and Issuance of Contracts Produced Outside Virginia.*

After the non-resident producer and the assured have considered the exposures and determined upon the desired coverage, the company passes upon the acceptability of the risk. The contract form is then prepared in a branch office or agency of the company in the State of production, particular provisions of it frequently being devised by the producer (R. 868). The contract, bearing the printed signatures of the company officers, provides that it is not binding on the company unless countersigned by an authorized representative (Ex. 4, R. 178, 180; Ex. 5, R. 178, 192; Ex. 7, R. 178, 199; Ex. C, R. 494, 496; Ex. D, R. 494, 502). If a non-resident producer is an agent he executes the contract by countersigning it as the company representative; if the producer is a broker, it is thus executed by such a representative. In either case the producer checks the provisions of the contract. After the contract has been thus executed it has been customary for a "law rider", or an endorsement, stating the amount of the premium paid for the Virginia cov-

erage, to be countersigned by a Virginia agent. Prior to the 1938 amendments of the Virginia statutes, such countersignature of the law rider or endorsement has been furnished, without charge, by a salaried resident agent, such as one of the individual plaintiffs. After countersignature, if the contract be a Workmen's Compensation or automobile contract, the law rider or a schedule of the Virginia coverage is filed by the company with the Virginia Insurance Department (R. 125, 159-160, 575-576).

D. *The Acts and Obligations of the Company under the Contracts.*

Under these contracts there is always a contingent obligation to pay money, which payment may be made outside of Virginia and presumably is to be made outside Virginia in cases of non-resident assureds. Under some of the contracts there is a right reserved to the company to perform other acts in Virginia at its option and under other contracts there is an obligation so to do. For example, neither the fidelity bond nor accident and health policy imposes any obligation on the company other than the payment of money (Ex. 4, R. 178, 179-184; Ex. 7, R. 178, 197-200). Such contracts can be fully performed outside the State of Virginia. The glass policy permits, but does not require, the company to inspect the premises in Virginia and in the event of loss to replace the glass in lieu of payment (Ex. 5, R. 178, 185-190). The Workmen's Compensation, automobile and boiler and machinery contracts all require defense of suits or other acts in Virginia (Ex. C, R. 494, 495-501; Ex. 6, R. 178, 191-196; Ex. D, R. 494, 502-505). [The contract

forms referred to are typical of those in general use (R. 178, 201, 574, 577)].

The companies maintain a field force of trained personnel who inspect the exposures in Virginia under certain types of contracts and make recommendations to reduce the possibility of loss and the cost of the insurance to the assured (Op. R. 46, 707-732). This service is rendered in connection with Workmen's Compensation, boiler, elevator, machinery, fleet automobile and some public liability, burglary, plate glass contracts (R. 887). The companies also furnish the assured claim service in Virginia (R. 681-698). The Virginia resident agents render no services to the assured under a policy produced by a non-resident agent or broker, as the non-resident producer renders all services not rendered by the salaried personnel of the company (Op. R. 54).

As to some contracts the probability is that no act will be performed by the company in Virginia or elsewhere, the duration being so short and accidents so infrequent (Ex. 39, 40, R. 895, 896, 898, 899).

E. The Assureds under the Contracts Produced Outside of Virginia.

Occasionally the non-resident assured is an individual who keeps his records and manages his business outside the State and has interests in Virginia and elsewhere. But ordinarily the assured is a large national corporation with its principal office in a large business center (Op. R. 48). Frequently it has personnel at its principal office whose sole function is to

deal with its insurance matters, who purchase all of its coverage there because the cost is decreased by buying in quantity and the solution of its insurance problems is greatly facilitated by centralization of its buying. It is easier to insure against many risks by the procurement of one contract and the payment of one premium therefor and the assured is better able to place the responsibility for proper coverage of its risks in its insurance manager. Such a corporation does not have in the localities of its exposures representatives qualified to attend to its insurance matters, or the records necessary for transacting the business. Multiple coverage contracts are usually rated on the accident and loss record for the combined risks and such rating cannot be determined properly if each exposure must be insured separately through a local agent (Op. R. 49-50).

Ordinarily the central office of such a corporation is located in New York, Chicago or some other large business center (Op. R. 48). Many corporations having their principal office in Virginia similarly purchase their contracts in Virginia to cover exposures in whatever states they may be located (Op. R. 46, 465-466, 481, 483).

F. *The "Usual and Customary" Commission.*

The entire "production cost", or cost of getting the business, is divided into two factors: the "acquisition cost" and the "field supervision cost". The acquisition cost is the commission paid to the producer of the business and averages 13.5% of the premium. This is usually the only compensation he receives.

The field supervision cost, averaging 6.5% of the premium, is the amount paid the general agent for field supervision or retained by the company for branch office maintenance. When a general agent produces a contract, he is given the entire production cost (Op. R. 47-48, 135-137). The company pays a producer's commission on every contract issued (Op. R. 47), the amount of which is determined in the construction of the premium rate as a percentage of the premium (Op. R. 50, 135-137, 225). The defendants construe the term "usual and customary" commission as meaning the producer's commission (R. 100).

G. *Effect of the Statute upon the Plaintiffs.*

A substantial percentage of the contracts covering persons or property in Virginia is produced outside of Virginia. From 10% to 20% of the total premiums for Virginia coverage is paid on contracts produced outside of Virginia, *i. e.*, negotiated, ordered, underwritten, prepared, checked, executed, issued and delivered outside of Virginia. During 1937, twelve of the corporate plaintiffs received premiums of $410,967.62 on Virginia coverage under contracts produced outside the State, and paid commissions of $70,860.96 to non-residents for the production thereof (Op. R. 48). The average premium of one corporate plaintiff for the Virginia coverage under contracts produced outside Virginia in the year 1937-38 is, by computation, about $320 (R. 8-10, 93, 104, 201). Accordingly, the average usual and customary commission to a Virginia resident agent for countersigning such a contract under the challenged statute would be about $43.20.

Under Section 4222, as construed and enforced by defendants, contracts produced outside of Virginia are made through resident agents when countersigned by resident agents even though they do not negotiate the contracts or deliver the same or collect the premiums (Answer, 16-a, R. 32); and a resident agent may delegate the privilege of countersignature to an office employee by power of attorney (R. 567). The latter ruling did not restrict the delegation to an employee qualified to supervise the contents or form of the contract.

Under the statute, a Virginia agent must be paid the usual and customary commission for countersigning a contract produced outside Virignia if the non-resident producer is not licensed in Virginia and at least one-half the commission if the producer is licensed as a non-resident broker by Virginia. As bearing on the reasonableness of this requirement the defendants offered and the Court received over plaintiffs' objection, evidence of certain customs in the fire business with reference to the division of commissions in the fire business (Op. R. 56).

Plaintiffs contend that the situation in the fire insurance business differs so materially from the situation in the casualty and surety business as to render such evidence irrelevant on the issue of the reasonableness of the statute in its application to the casualty and surety business. The fire agent is usually an agent for many companies and the sole agent of each of his companies in a given territory (R. 265-266, 356, 627). Customarily local boards are organized which protect these rights of the fire agents. The casualty or surety agent usually has a maximum commission agency con-

tract only with a single company and has no exclusive territorial rights (R. 216-217, 280, 327, 468-469). Frequently the company and the producer of a fire contract procures the assistance of the agent or broker in the locality of the risk in the writing of the contract (R. 329, 356-357, 390); neither the producer of a casualty or surety contract nor the company issuing the contract ever procures assistance in the writing of the contract from an agent or broker in the locality of the risk (R. 111, 209).

The defendants claim that in return for at least one-half the usual and customary commission, the Virginia agent who countersigns a casualty or surety contract will render certain services to the company and the assured. In this regard the trial court, forecasting the future, expressed the opinion that the Virginia agent will doubtless be called upon to render such service as he is qualified to perform, and that the Virginia agent could be of assistance in the servicing of the contract, the adjusting of claims, and generally acting as mediator between the assured and the insurer in Virginia (Op. R. 56). On this the Court also made the following findings:

> "We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact, the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential

> business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business" (Op. R. 62).

The non-resident producer will not render the same services to the assured for one-half the compensation he is now receiving (Op. R. 54). He will continue to demand and receive from the company the "usual and customary commission" which has been earned by him as the producer of the business (R. 796, 805, 862-864, 910-911). The statute will, therefore, compel payment of double commissions and thereby increase the cost of insurance on Virginia risks (Op. R. 62).

Up to the present time the Virginia agent has rendered no service in connection with the making or performance of the contract produced outside the State, his act of counter-signing the law rider or endorsement being perfunctory (Op. R. 53-55). Neither the companies nor the assureds have any desire or need for the services of a Virginia agent in the production or servicing of such a contract (Op. R. 56).

The statute imposes no obligation upon the Virginia agent to render any service whatever to the company or to the assured in return for the commission required to be paid him except the manual act of countersignature.

Specification of Errors.

Appellants urge each of the assigned errors* Numbers I to V inclusive (R. 83-92). Without waiving or limiting any of said assignments, more particularly the trial court erred:

1. In finding, concluding and decreeing that Virginia has power to prohibit or regulate the making outside Virginia of contracts of casualty or surety covering persons or property therein and in failing to find that the making of such contracts is beyond the regulatory power of Virginia (Assignments of Error I 2, 3; II 9, 14, 18, 19; IV 31, 32 and 33; R. 83, 85, 86, 87, 90, 91; see Point I *infra*).

2. In finding, concluding and decreeing that Virginia has power to prohibit the production and making of contracts outside Virginia by agents duly licensed by the State where such contracts are made unless such agents are licensed as non-resident brokers by Virginia, and in failing to find that the statute requiring a non-resident agent of the corporate plaintiffs to be licensed by Virginia is beyond the power of the State (Assignments of Error IV 34; R. 91; see Point II *infra*).

*Assignments of Error Nos. I 1-3, inclusive, relate to errors in rulings on evidence. Many of the other assignments relate to findings and conclusions which are deemed plainly speculative, immaterial or inapplicable. These have been assigned and are reserved to avoid any technical question should any of them be claimed to amount to material findings or conclusions by implication

3. In finding, concluding and decreeing that the Virginia statute requiring payment of the usual and customary commission to a Virginia resident agent for countersigning a contract produced outside Virginia and prohibiting the countersigning of such contract by a Virginia salaried representative of the corporate plaintiffs is not discriminatory, arbitrary or an unreasonable exercise of the police and legislative powers of Virginia and therefore not a violation of the Fourteenth Amendment to the Constitution of the United States (Assignments of Error I 1; II 4, 27; IV 35; R. 83, 84, 89, 91; see Point III *infra*).

4. In finding, concluding and decreeing that the Virginia statute prohibiting a state agent, special agent, company representative or other salaried officer or manager of an insurance company from countersigning casualty and surety contracts does not deprive the plaintiffs of their property without due process of law and does not deny the individual plaintiffs the equal protection of the laws and therefore is not a violation of the Fourteenth Amendment to the Constitution of the United States (Assignments of Error II 27; IV 34; R. 89, 91; see Point IV *infra*).

5. In entering its final decree dismissing the bill of complaint and in failing to find, conclude and decree that the plaintiffs were entitled to the relief prayed for in said bill (Assignments of Error V; R. 92; see Point V *infra*).

Summary of Argument.

POINT I The Virginia Statute Prohibiting the Corporate Plaintiffs from Making, Outside of Virginia, Contracts of Insurance and Surety Covering Persons and Property in Virginia, is Unconstitutional and Void.

POINT II Section 4226 (a) of the Code of Virginia, Prohibiting Plaintiffs from Making any Contract of Insurance or Surety on Persons or Property in Virginia if Solicited or Negotiated out of Virginia by a Person not Licensed by Virginia, Denies to the Plaintiffs Due Process of Law, and is Unconstitutional and Void.

POINT III The Requirement that a Countersigning Resident Agent shall be paid the Same Usual and Customary Commission as that paid to Another for Producing the Contract Deprives the Corporate Plaintiffs of their Property without Due Process of Law, and is therefore Unconstitutional and Void.

POINT IV The Prohibition of Section 4222 (a) against Salaried Agents Countersigning Deprives the Corporate Plaintiffs of their Property and the Individual Plaintiffs of their Liberty and Property without Due Process of Law and Denies the Individual Plaintiffs the Equal Protection of the Laws and is therefore Unconstitutional and Void.

POINT V Conclusion.

ARGUMENT.

POINT I.

The Virginia Statute Prohibiting the Corporate Plaintiffs from Making, Outside of Virginia, Contracts of Insurance and Surety Covering Persons and Property in Virginia, Is Unconstitutional and Void.

The question presented to the Court by this case is neither new nor novel. In at least five cases heretofore decided by it, this Court has been squarely presented with the same question, *i. e.*, whether a state may constitutionally regulate or penalize the making, beyond its borders, of contracts of insurance or surety upon persons or property located within the state.

Hartford Accident & Indemnity Company v. Delta & Pine Land Company, 292 U. S. 143;

Fidelity & Deposit Company v. Tafoya, 270 U. S. 426;

Aetna Life Insurance Company v. Dunken, 266 U. S. 389;

St. Louis Cotton Compress Company v. Arkansas, 260 U. S. 346;

Allgeyer v. Louisiana, 165 U. S. 578.

In each of these cases, this Court has denied, as here we believe it must again deny, that a State possesses such power.

In other cases presenting cognate, if not identical, questions this Court has adhered to the position taken in the above cases, and has held that the Fourteenth Amendment prohibits a State from giving such extra-

territorial effect to its statutes as to allow it to regulate or penalize the formation of contracts beyond its boundaries, though having to do with persons or property within them.

Boseman v. Connecticut General Life Insurance Company, 301 U. S. 196;

Home Insurance Company v. Dick, 281 U. S. 397;

New York Life Insurance Company v. Head, 234 U. S. 149.

Here, the corporate plaintiffs are foreign corporations, qualified to do, and doing, insurance and surety business in the State of Virginia. They also do business in other states. In those states, as in Virginia, they make contracts of insurance or surety, or both. Some of those contracts of insurance and surety, made in and according to the laws of those several states, cover risks on persons and property in Virginia. Virginia seeks to prohibit the plaintiffs from engaging in such business in other states, and its statutes attempt to impose upon the plaintiffs penalties for making such contracts. Under the decisions of this Court, it is apparent that the Constitution denies such power to Virginia.

In the group of cases first above referred to, every factor here involved was present. In the *Delta & Pine Land Company* (292 U. S. 143) and *Dunken* (266 U. S. 389) cases, Mississippi and Texas respectively, by their statutes declared that insurance and surety contracts on persons and property within the state should be regarded as local contracts, and required that certain provisions be incorporated in such contracts, in the one

case fixing a statutory period for notice of loss and in the other imposing a penalty for failure to pay promptly. In each case the insurance company was qualified to do business in the state where the risk was located. In each case the contract involved was written in Tennessee. The first was a contract of surety covering an employee in Mississippi, the second a life insurance policy covering a Texas assured. In each case the contract, made in Tennessee and in accordance with its laws, contained terms conflicting with the Mississippi and Texas statutes. In both cases this Court held that the state of residence of the person covered was without constitutional power to regulate or penalize contracts made in Tennessee and there valid, and held the Mississippi and Texas statutes unconstitutional as there applied.

So in the *St. Louis Cotton Compress* case (260 U. S. 346) where Arkansas had attempted to impose upon a foreign corporation qualified to do business in Arkansas, a penalty for making, in Missouri, where rates were lower, a contract of insurance covering Arkansas property, the Court held the statute unconstitutional. The same result was held to be required under the Constitution in the *Tafoya* case (270 U. S. 426), where New Mexico attempted to revoke the license of an insurance company qualified to do business in New Mexico because it had, contrary to the New Mexico statute, made payments to agents out of New Mexico for the procurement of business covering risks arising in New Mexico.

So, too, this Court held unconstitutional the Louisiana statute involved in the *Allgeyer* case (165 U. S.

578) under which Louisiana attempted to impose upon a resident of that state a fine for making, outside of Louisiana with a company not doing business in Louisiana, a contract of insurance covering property within the state and for sending notices to the company with regard to the property covered.

In the remaining cases above referred to (*Boseman v. Connecticut General Life Insurance Company*, 301 U. S. 196; *Home Insurance Co. v. Dick*, 281 U. S. 397; and *New York Life Insurance Company v. Head*, 234 U. S. 149) the situation presented, if not identical with the present one, was closely analogous, and the ultimate issue the same. In every case this Court has held an attempt by a state to regulate or penalize contracts of insurance relating to property or persons within the state but made outside the state, a violation of due process and therefore unconstitutional and void.

Further extended discussion of these cases is, we believe, unnecessary. They may be best summarized by brief excerpts from the opinions in the *St. Louis Cotton Compress* and *Delta & Pine Land Company* cases. In the former, Mr. Justice Holmes briefly stated the position of the Court as follows:

> "It is true that the state may regulate the activities of foreign corporations within the state, but it cannot regulate or interfere with what they do outside" (260 U. S. at p. 349).

In the latter case Mr. Justice Roberts, writing for the Court, briefly set forth in the following sentences the effect of the Fourteenth Amendment upon the Mississippi statute involved:

"The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit or prohibit the making of certain contracts within its own territory (Hooper v. California, 155 U. S. 648; Orient Ins. Co. v. Daggs, 172 U. S. 557, 565, 566; New York L. Ins. Co. v. Cravens, 178 U. S. 389, 398, 399); but it cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. (New York L. Ins. Co. v. Head, 234 U. S. 149; Aetna Ins. Co. v. Dunken, 266 U. S. 389, 399). Nor may it in an action based upon such a contract enlarge the obligations of the parties to accord with every local statutory policy solely upon the ground that one of the parties is its own citizen. Home Ins. Co. v. Dick. 281 U. S. 397, 407, 408." (292 U. S. at p. 149).

In the light of these decisions, we believe it apparent that Virginia's attempt to regulate the business of the plaintiffs in other states must be held unconstitutional. Indeed, the congenital defect of the Virginia statute is indicated by its own limitations, for Virginia makes no attempt by her statutes to restrict the making of insurance or surety contracts on persons or property in the state by corporations not qualified to do business there. Obviously, such an attempt, if made, would be predestined for failure. And no more successful, we believe, can be this attempt to use the state's regulatory power over internal affairs as a lever with which to control and restrict transactions beyond her jurisdiction—to inflict upon the plaintiffs, if we may use

the phrase of Mr. Chief Justice White, "a perpetual contractual paralysis following them outside of the jurisdiction of the state". *New York Life Insurance Company v. Head*, 234 U. S. 149, 161; *Fidelity & Deposit Company v. Tafoya*, 270 U. S. 426.

* * * * *

As opposed to the consistent lines of decisions in cases identical or closely analogous to the present one the defendants, and the Court below, have offered in support of the statute contentions falling into three divisions: (1) That the statute reinforces Virginia's control over local business, and assists in making effective whatever regulation of local business her policy may demand; (2) That, under the decision of this Court in *Bothwell v. Buckbee, Mears Co.*, 275 U. S. 274, the fact that the plaintiffs may render services in the State in connection with policies written outside the State renders the Statute constitutional; (3) Decisions of this Court in cases involving the permissible measure of state taxation.

(1) It is argued, by the Court below, in support of the statute that it will assist Virginia in making effective her regulation of local insurance business, and thereby assist her in carrying out policies which she is undoubtedly free to adopt (Op. R. 61). The same argument was advanced in support of each of the statutes declared unconstitutional in the cases we have discussed above.

Undoubtedly it was legitimate local policy for Texas to determine that in contracts of insurance made in that state, no provision should be made for a period

for giving notice of loss or bringing suit shorter than that determined by the legislature (cf. *Boseman v. Connecticut General Life Insurance Company*, 301 U. S. 196 and *Home Insurance Company v. Dick*, 281 U. S. 397) and that payment for loss should be made promptly (cf. *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389). Clearly Mississippi might regulate provisions for notice of loss contained in contracts made within that state. (cf. *Hartford Accident & Indemnity Company v. Delta & Pine Land Company*, 292 U. S. 143). We know from *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389 that Arkansas might regulate premium rates on contracts made within that state (cf. *St. Louis Cotton Compress Company v. Arkansas*, 260 U. S. 346). It is apparent from *O'Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U. S. 251, that New Mexico might reasonably regulate commissions paid in that state on contracts made there (cf. *Fidelity & Deposit Company v. Tafoya*, 270 U. S. 426). Obviously, Louisiana possesses regulatory power with regard to contracts of insurance made within her boundaries (cf. *Allgeyer v. Louisiana*, 165 U. S. 578), and Missouri with regard to loans made there (cf. *New York Life Insurance Company v. Head*, 234 U. S. 149).

In every instance referred to, the statute involved embodied a determination of state policy permissible in the regulation of local affairs. In every case it was held unconstitutional when, in pursuance of that policy, it attempted to restrict, regulate, or prohibit the doing of acts, the making of contracts, beyond the state's territorial limits. In this case the statute does precisely that. It attempts to prohibit the production and making of a contract outside Virginia unless a Virginia

agent signs the contract and collect the premiums. In short, under this statute no contract of insurance covering risks in other states and including Virginia risks can be made anywhere except within the State of Virginia (Sec. 4226-a).

Here, the statute itself suggests and the defendants answer frankly admits (R. 40-41) that the Virginia policy embodied in this legislation is an attempt to divert business from other states and into Virginia. But even if it be admitted that this policy is legitimate, or that some other and more admirable one supplies the reason for the statute, it is still clear that Virginia may not, without denying to the plaintiffs due process of law, enforce that policy by penalizing the plaintiffs for acts done and contracts made beyond Virginia's jurisdiction.

(2) Both the Court below and the defendants refer to the decision of this Court in *Bothwell v. Buckbee, Mears Co.*, 275 U. S. 274, in support of the statute here challenged. But the support sought for is patently not furnished by the decision. In that case, an insurance company not authorized to do business in Minnesota sent its representative into that state and there solicited business from a Minnesota resident. This court held that since the company had violated Minnesota law by going into the state and there doing business without authorization, Minnesota was not required to furnish the aid of its courts for a suit upon the resultant contract. This Court in its opinion by Mr. Justice Brandeis drew a clear line between the situation arising in the present case and that presented by the case then at bar when it said:

"The parties had, under the Allgeyer and Cotton Compress Co. cases, the constitutional right to make in Maryland a contract of insurance despite a prohibition of the Minnesota law. But the company, a foreign corporation, had no constitutional right to solicit the insurance in Minnesota by means of an agent present within that state. For the act of solicitation there the state might have punished the agent; and also the company as principal." (275 U. S. p. 277.)

In the *Bothwell* case, this Court, as stated above, held that since the Insurance Company had violated the laws of Minnesota by negotiating the contract in that state though unlicensed to do business there. Minnesota might refuse to lend the aid of its courts in a suit upon the contract. This was true even though, as the Court stated, Minnesota could not constitutionally prohibit the making of the contract outside the state.

The Court then went on to state (275 U. S. pp. 278-279) further reasons why Minnesota need not permit the suit in its Courts. It pointed out that the contract which was one of "strike insurance", required or contemplated that the Insurance Company should do various acts in Minnesota. Since the company was not licensed to do business in Minnesota these acts, required or contemplated there, would be illegal. Therefore, said this Court, the state "may refuse to enforce a contract which provides for doing within it an act prohibited by its laws" (275 U. S. p. 278).

From this holding, the defendants draw the rather unwarranted conclusion that the Virginia statute here

in question must be held to be constitutional. They state that the contracts of insurance or indemnity issued by the plaintiffs in this case call for acts to be done in Virginia ("servicing the contracts"), and from this they argue that Virginia thereby "acquires jurisdiction" over the contracts with the assumption that this "jurisdiction" gives Virginia the power to regulate or prohibit the making of the contracts beyond the state as well as the power to regulate performance within the State. The fallacies of the defendants' argument are apparent.

First: The Virginia statute here in issue prohibits the making of contracts outside the state. It attempts neither to regulate nor to prohibit performance within the state. This Court in the *Bothwell* case specifically stated (See above) that Minnesota could not constitutionally prohibit, as Virginia here attempts to do, the making of the contract outside of Minnesota. The Court, denying Minnesota's power to prohibit the making of the contract, held only that Minnesota need not open its courts to suit on a contract negotiated illegally in Minnesota and requiring and contemplating the performance of illegal acts within the State.

Second: This case does not involve the doing of any prohibited act, either in making or performing contracts, within Virginia. The plaintiffs here seek the protection guaranteed them by the Constitution against penalties sought to be imposed by Virginia for negotiating and making contracts entirely beyond the state's borders. Virginia seeks not to penalize, as Minnesota did, illegal action within the state, but to prohibit action outside the state, which this Court held Minnesota powerless to do.

Nor do the contracts which the plaintiffs assert they have the right to make outside the state require or contemplate that they shall do any illegal act within the state. Virginia has not attempted either to regulate or prohibit the performance of such contracts. Concededly, if Virginia so wished it could impose reasonable regulation of performance of any contract within that state. But it has not done so and this case does not involve any such regulation. The plaintiffs are licensed to do business in Virginia, and no act of performing or servicing a contract of insurance therein is prohibited to them by any Virginia statute. The defendants argue a case not here at bar when they argue that Virginia could regulate the performance or servicing, within the state, of contracts made outside. Granted that power, Virginia still lacks the power to prohibit and penalize the making of contracts outside the state (*Bothwell v. Buckbee, Mears Company*, 275 U. S. 274).

Third: While some of the insurance contracts written by the plaintiffs do call for or contemplate service within Virginia—service which no Virginia law prohibits to the plaintiffs—many of them are accident policies and fidelity bonds similar to the contracts considered in the *Boseman* and *Delta & Pine Land* cases, *supra* (Ex. 4, R. 178-184; Ex. 7, R. 178, 197-200). These contracts neither require nor contemplate performance or service in Virginia. Yet the statute makes no distinction between these contracts and others such as Workmen's Compensation policies (Ex. C, R. 494-501) which do call for service within the state. Even if it were not otherwise clear, it must be apparent from this that it is not performance and service within the state which Virginia attempts to regulate and that the

statute is not to be jusified on the asserted basis of its being enacted in assistanee of such regulation.

The *Bothwell* decision lends no support to the defendants. If there were doubt of that, it must be removed by the Court's subsequent decisions in *Home Insurance Company v. Dick, Hartford Accident & Indemnity Company v. Delta & Pine Land Company,* and *Boseman v. Connecticut General Life Insurance Company,* all referred to and discussed above.

(3) The third contention advanced in support of the Virginia statute is based upon decisions of this Court with reference to the permissible measure for the determination of taxes. Particularly emphasized are the decisions of the Court in *Equitable Life Assur. Society v. Pennsylvania,* 238 U. S. 143 and *Compania General de Tabacos v. Collector,* 275 U. S. 75. In those cases the Court held that it was permissible for a state (or territory) to determine the measure for local taxes by including therein premiums on contracts of insurance covering persons or property within the state (or territory) even though the contract were made outside the state (or territory). Again we might point out that the later decisions of the Court above referred to in cases identical or analogous with the present one, demonstrate that these cases offer no support for the Virginia legislation here in issue.

But even putting aside these more recent decisions of the Court on statutes similar to §4222 (a) of the Code of Virginia, it must be apparent that the defendants' argument has little merit. In cases too numerous to mention, this Court has held that a state may, in determining the measure of local taxes, take into consideration relevant factors arising beyond the state, so long as method was reasonable and apportion-

ment not unfair. But the Court has never held that these extra-territorial factors are subject to the regulatory or prohibitory power of the state. If this were true we should be afflicted with constantly recurring conflicts of state laws relating to the same acts.

Perhaps no case better illustrates the difference between the power of a state to take into consideration for tax purposes factors arising beyond its boundaries and the power of the state to extend its regulatory power to extra-territorial acts, than the decision much relied on below, *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U. S. 412. It was there held that Louisiana might impose a tax upon chain stores, graduated by number, and in imposing the graduated tax on stores within the state, might take into consideration the number of stores owned by the taxpayer outside the state. But this decision certainly did not mean that Louisiana could regulate the conduct or operation of the stores beyond its boundaries. It is, we believe, hardly probable that the Court intended to indicate, or would ever hold, that Louisiana could constitutionally prohibit the Great Atlantic & Pacific Tea Company from selling in its stores in Ohio and Oregon, Maine and Michigan, and all the states in which such stores are located, any sugar other than Louisiana cane sugar, any matches other than those containing Louisiana sulphur, or any salt other than that produced in Louisiana. Yet such a Louisiana statute, improbable as it may be, finds its parallel in Section 4222 (a) of the Code of Virginia. We believe it apparent that Louisiana's permissible exercise of its taxing power affords no sanction or precedent for Virginia's attempt to give to its insurance laws extra-territorial force and operation.

POINT II.

Section 4226(a) of the Code of Virginia Prohibiting Plaintiffs from Making Any Contract of Insurance or Surety on Persons or Property in Virginia if Solicited or Negotiated out of Virginia by a Person not Licensed by Virginia, Denies to the Plaintiffs Due Process of Law, and is Unconstitutional and Void.

As has been seen heretofore, Section 4222 (a), as amended, of the Code of Virginia attempts to prohibit the plaintiffs from making any contract of insurance or surety on persons or property except through resident agents. Section 4226-a defines as non-resident brokers any non-resident person, firm or corporation who shall solicit for compensation, directly or indirectly to be derived therefrom, any contracts of insurance or surety on persons or property located in the state, and prohibits any resident agent from writing or issuing any contract of insurance or surety on persons or property in the state, produced by any "non-resident broker" who is not licensed by Virginia.

It is apparent from these provisions (1) that plaintiffs' agents who are non-residents of Virginia and who are compensated by commissions fall within the statutory definition of non-resident brokers, and (2) that, taken together, these sections of the statute attempt to prohibit the plaintiffs from issuing contracts produced outside the state by the plaintiffs' agents duly authorized and appointed in the state where licensed unless such agent be also licensed by Virginia after the payment of a tax.

In thus regulating and prescribing the persons whom the plaintiffs may select and appoint to represent them in other states, and in prohibiting the plaintiffs from making contracts of insurance or surety produced by their agents in other states unless such agents shall have been licensed by Virginia, that state is giving to its laws extra-territorial operation, and is denying to the plaintiffs due process of law.

That this section of the statute is unconstitutional must follow from the decision of this Court in *Fidelity & Deposit Company v. Tafoya*, 270 U. S. 426. In that case the plaintiff insurance company, a foreign corporation licensed to do business in New Mexico, sued to enjoin the members of the State Corporation Commission from suspending its license to do business in the state. The defendants were threatening to do so "for the sole reason that the plaintiff has made payments to its agents in states other than New Mexico in connection with the procurement of business made, written and placed" in New Mexico. A statute of New Mexico made it "unlawful for any insurance company authorized to do business in New Mexico • • • to pay • • • either directly or indirectly, any fee, brokerage, or other emolument of any nature to any person, firm or corporation not a resident of the State of New Mexico, for the obtaining, placing or writing of any policy or policies of insurance covering risks in New Mexico. Any insurance company violating this section shall have its certificates of authority to do business in this state suspended for not less than one year."

The opinion of the Court in that case, written by Mr. Justice Holmes, and holding the statute contrary

to the Fourteenth Amendment, so clearly controls in the present case that we take the liberty of setting it forth at some length:

"Coming then to the merits we assume in favor of the defendants that the state has the power and constitutional right arbitrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result. Frick v. Pennsylvania, 268 U. S. 473, American Bank & T. Co. v. Federal Reserve Bank, 256 U. S. 350, 358. Badders v. United States, 240 U. S. 391, 394; United States v. Reading Co., 226 U. S. 324, 357. Thus the right to exclude a foreign corporation cannot be used to prevent it from resorting to a federal court, Terral v. Burke Constr. Co., 257 U. S. 529; or to tax it upon property that by established principles the state has no power to tax, Western U. Teleg. Co. v. Kansas, 216 U. S. 1, and other cases in the same volume and later that have followed it; or to interfere with interstate commerce. Sioux Remedy Co. v. Cope, 235 U. S. 197, 203; Looney v. Crane Co., 245 U. S. 178, 188; Western U. Teleg. Co. v. Foster, 247 U. S. 105, 114. A state cannot regulate the conduct of a foreign railroad corporation in another jurisdiction, even though the company has tracks and does business in the state making the attempt. New York, L. E. & W. R. Co. v. Pennsylvania, 153 U. S. 628, 646.

The case last cited was one of an attempt to regulate the corporation's payments in another state. By the same principle on even stronger grounds the corporation cannot be prevented from employing and paying those whom it needs for its business outside the state * * *." (270 U. S., pp. 434-435.)

We believe that this decision of the Court demonstrates that Virginia has no power to regulate the corporate plaintiffs as to those persons whom they employ outside of the state, or to prohibit the corporate plaintiffs from making contracts of insurance produced by agents duly appointed in the states wherein they act, regardless of any license by Virginia.

POINT III.

The Requirement that a Countersigning Resident Agent shall be paid the Same Usual and Customary Commission as that paid to Another for Producing the Contract Deprives the Corporate Plaintiffs of their Property without Due Process of Law, and is therefore Unconstitutional and Void.

Section 4226-a, supplementing Section 4222 (a) which requires that every contract shall be signed by a resident agent, requires that he shall be paid the usual and customary commission paid for the production of the business. The statute imposes no responsibility and no duty upon the resident agent other than the countersigning of the contract. As pointed out below, the Court has found that this provision in operation will require the payment of a commission to the producer and another full commission to the resident agent.

Another pertinent and significant feature of the statute is the provision that if the business has been actually produced by an out-of-state agent or broker who has been licensed by the State of Virginia, the resident agent may, in his discretion, pay to the actual producer an amount not exceeding 50% of the compensation received by him. It follows that if the out-of-state producer has not been licensed by the State of Virginia, the resident agent cannot make any payment to him.

Thus the question of whether the resident agent is to receive the full commissions or only 50% of them is

to be determined not by the amount or value of his services, but by the adventitious and unrelated question of whether the out-of-state producer who brought the business to the company was or was not licensed by the State of Virginia.*

The novel character of this arrangement challenges close scrutiny and suggests that this is not a normal business practice, but a device aimed to accomplish an ulterior purpose.

As above stated, we contend that the statute is unconstitutional because by it Virginia attempts to give extra-territorial effect to her laws. But even without regard to that question, we submit that the provisions of the statute above referred to taken with Section 4222 (a) are so arbitrary as to deprive the corporate plaintiffs of their property without due process of law.

The Court below seemed to infer (Op. R. 51) that this requirement might be brought within the police power, first, because it would tend to increase the revenue of resident agents and of small domestic insurance companies, and second, because it would definitely increase the cost of insurance to all non-resident assureds and thus give aid to their small competitors domesticated in Virginia. The Court also intimated that this provision would operate to lessen the difficulty of enforcing the State Insurance Laws (Op. R. 52-53).

It is important to note that the chief reasons given by the Court in support of its view are based upon

*Some, at least, of the out-of-state producers who bring the business to the companies are not licensed by the State of Virginia. The companies are without power to compel these producers to procure such licenses (R. 93, 104).

matters of speculation and "prognosis". The Court thought it possible to expect that if the resident agent received this commission, he might be encouraged to render himself useful (Op. R. 53-61). These expectations as to the future conduct of a resident agent, as enumerated in the opinion, may be thus summarized:

A resident agent receiving the same usual and customary commission paid to another for producing the business and retaining at least 50% of it "will *doubtless* be called upon to render such services as he may be qualified and able to perform, even though the statute merely provides that the contract shall not be made except through resident agents and except with their countersignature thereon" (Op. R. 56). Such agents "*could* be of assistance in checking the coverage and premium, servicing the contract, adjusting claims of loss, and acting in general as the mediator between the assured and the insurer in the locality of the exposure" (Op. R. 56). The Court (Op. R. 61) thought "it is reasonable to conclude" that the requirement "*will probably* lead to greater participation on the part of the resident agent and he will be expected to render to the company and to the assured all the services of which he is capable. The tendency will be to create a more efficient agency force with the result that the local interests of the insured will be better served", and "it cannot be denied that such an agent can render services of substantial value." Finally the Court observed (Op. R. 61) that it is not an unreasonable "prognosis" that the creation of greater responsibility on the part of the resident agents will assist the state in the enforcement of its insurance laws.

It is respectfully submitted that in the absence of a statutory provision imposing any duties or responsibilities upon the resident agent, this requirement is unconstitutional. There is no relationship between the amount of the required compensation and the value of the services certain to be rendered by the recipient to the corporation which is required to make the payments. Cf. *West Coast Hotel Company v. Parrish*, 300 U. S. 379, 396; *Morehead v. New York*, 298 U. S. 587, dissent by Hughes, C. J. 622-623; *New York Life Ins. Co. v. Dodge*, 246 U. S. 357, dissent of Brandeis, J. 382.

An even clearer demonstration that this requirement is an unnecessary and unjustifiable interference with the business of the corporate plaintiffs, is to be found in the findings of fact of the court below, which appear to overweigh and even refute the prognoses above outlined.

The Court below clearly set forth the financial burden which these provisions will impose upon the corporate plaintiffs and their non-resident assureds. It stated in its findings (Op. R. 54):

> "The Act * * * will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent. The amounts

now paid the out-of-state producer are not shown to be excessive, and it is not to be expected that he will render the same services for one-half of the compensation."

The Court also found that there were aspects of the business in which no adequate services could be obtained from resident agents. Practically all the contracts produced outside of Virginia are multiple coverage contracts (R. 49). Such contracts are usually rated as to premium on the accident and loss record previously made on all of the combined risks. Such ratings can not be determined properly if each separate risk or exposure must be separately insured through local resident agents (R. 50). In many localities of exposure there are no resident agents capable of handling the insurance of a large corporation (R. 50). The Virginia resident agents do not have the opportunity to acquire the information and experience that will acquaint them with the insurance market and render them expert in the rating and underwriting of multiple risks (R. 51). After the contract goes into effect, the producer customarily ascertains whether the assured is receiving proper attention from the companies' servicing personnel, and he makes his own investigations and recommendations in the light of his own expert knowledge in order to reduce the client's rating and expense (R. 46). The assured does not have in the locality of its various exposures representatives authorized and qualified to attend to its insurance matters nor the records necessary for transacting the business (R. 50). The companies and assureds have felt no desire or need for the services of the local agent in the production and servicing of master contracts (R. 56).

Referring to the 50% (or 100%) tribute—exacted by the statute on behalf of Virginia agents—the Court below subsequently pointed out that this gave no added protection or service to the non-resident assured, saying (Op. R. 62):

> "We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business."

The reasons, based upon expectation, given by the Court below for upholding the statute seem clearly inconsistent with the Findings of Fact above recited.

In short, (1) it is the insurance company, not the local agent, who maintains a staff of engineers who

inspect the risks covered by the company (Op. R. 46); (2) it is the producer, not the local agent, who not only ascertains whether the assured is receiving proper attention from the servicing personnel (of the company), but also makes his own investigations and recommendations in order to reduce the client's rating and expense (Op. R. 46); (3) in many localities of exposure there are no resident agents capable of handling a large corporation's insuranee (Op. R. 50); (4) the services habitually offered a resident assured by a resident producer have, in the case of a non-resident assured been rendered, not by the local agent, but by the non-resident producer and by the companies' salaried employees, such as engineers and adjusters, particularly the latter, when the matter has been one that could not be handled by a producer remote from the locality of the coverage (Op. R. 55); (5) the plaintiff companies and the assureds have felt no desire or need for the services of the local agent in the production and servicing of master contracts (Op. R. 56): and (6) prior to the Act of 1938, the resident agent who countersigned a contract produced outside the State performed no useful function in the production, underwriting or servicing of the contract.

In the face of these findings, what are the services for which the company must pay the resident agent the full commissions usually paid to a producer? To entitle him to receive not more than all and not less than half of the usual commissions, the statute requires him to do one, and only one, thing. He must countersign, and he alone is permitted to countersign, the contract.

For the simple task of countersigning—writing his name—he receives the statutory compensation. And the task which he must perform the Court below characterized—and the characterization can hardly be disputed—as perfunctory (Op. R. 55).

The uncontradicted testimony shows that the amount of compensation which the statute requires will be grossly excessive. In the case of one corporate plaintiff, the fees which it will be required to pay to the resident agent for countersigning its policies may be computed as running from $21.60 on certain risks to $43.20 on other risks (R. 8-10, Op. R. 47, 93, 104, 201). The unreasonableness of this arbitrary requirement of usual and customary commission is further illustrated by the absence from the statute of any mandate requiring the countersigning resident agent to accept the usual and customary commission where the amount of this compensation will be slight.

As stated above, the Court erred in assuming that the custom of splitting fire insurance commissions provides an analogy for this statutory requirement. The countersigning fire insurance agent has exclusive territorial rights not possessed by a countersigning casualty or surety agent (R. 216-217, 265-266, 280, 327, 356, 468-469, 627). The countersigning fire insurance agent frequently writes the contract while the countersigning casualty or surety agent never does (R. 111, 209, 329, 356, 390).

We respectfully submit that there can be no justification for such a statute arbitrarily requiring excessive payments to be made in return for the possibility of some services being rendered, highly speculative in

character and wholly undesired. In the Court below, defendants relied on the decision in *O'Gorman & Young, Inc. v. Hartford Fire Insurance Company*, 282 U. S. 251. In that case, this Court upheld a New Jersey statute limiting commissions payable to insurance agents, the opinion pointing out that large commissions increased rates and that the public having a proper interest in those rates, the State might therefore insist that commissions be kept within reasonable limits. It is respectfully suggested that if the reasons for its decision in that case are sound, it does not support, but instead its implications negative, the validity of the present Virginia statute.

Certainly nothing in that decision supports a statute requiring large payments, arbitrary in amount, to be paid by the corporate plaintiffs to agents for problematical services,—particularly where the payments, as the Court below found, will inevitably increase the expenses of the insurance companies and the cost of insurance to the public. The Fourteenth Amendment operates to prohibit the bold expropriation of property by a State. These provisions of the Virginia statute, we respectfully submit, require a decision that it is unconstitutional under the provisions of the Fourteenth Amendment.

POINT IV.

The Prohibition of Section 4222 (a) against Salaried Agents Countersigning Deprives the Corporate Plaintiffs of their Property and the Individual Plaintiffs of their Liberty and Property without Due Process of Law and Denies the Individual Plaintiffs the Equal Protection of the Laws and is therefore Unconstitutional and Void.

The statute is arbitrary and unconstitutional in that it denies to the individual plaintiffs the equal protection of the laws by denying to them the right to execute, by countersigning, contracts covering persons or property therein and produced *within* Virginia. The individual plaintiffs were, prior to June 21, 1938, licensed insurance agents in the State of Virginia and the only reason they are not now so licensed is because they are salaried employees. No question has been raised as to the competency and fitness of these individuals to act as insurance agents and presumably none can be. They are entrusted by their companies with the same duties as General Agents who are licensed as producing agents (Op. R. 47). Under the statute involved, the salaried agents can solicit, underwrite and deliver contracts as well as furnish assistance to Virginia producers (R. 238). The only right possessed by a resident agent prohibited a salaried agent by the statute is the right to perform the purely manual act of countersignature. Simply because they are compensated by salary rather than by commission the statute now denies them the right so to act.

The prohibition against salaried agents executing by countersignature contracts produced in Virginia by Virginia resident agents substantially decreases the value of the services of salaried agents with consequent damage to them and the corporate plaintiffs by whom they are employed. Frequently these salaried agents have executed contracts produced in other parts of Virginia (R. 219-220). Under this statute it will be necessary for the corporate plaintiffs to have such contracts executed by a Virginia resident agent and to compensate him as well as pay a commission to the producing resident agent.

The physical act of executing or countersigning the contract was formerly perfunctory and under this statute will continue to be a perfunctory act. As construed by the Virginia Insurance Department the "privilege of countersignature" may be delegated by a resident agent to any full time employee of his office (R. 567).

In discriminating against these plaintiffs and handicapping them in the pursuit of a gainful occupation without questioning their fitness or ability, the statute deprives the plaintiffs of their liberty without due process of law and denies to them the equal protection of the laws. A similar case came before this Court in *Smith v. Texas*, 233 U. S. 630. In that case the petitioner was regularly employed as freight train engineer. A statute of Texas prohibited any person from acting as conductor of a freight train unless he had been for two years a conductor or brakeman. The petitioner was convicted of a violation of the statute,

and appealed to this Court. The record showed that he was thoroughly acquainted with the duties of a conductor, and competent to perform them. This Court held that Texas could not constitutionally impose restrictions and limitations upon the holding of the position as conductor without reference to the individual's qualification for the position.

In the present case the restriction imposed upon the individual plaintiffs is equally arbitrary. The fact that they are salaried agents can in no way relate to their fitness to countersign policies of insurance, and to perform the other acts required and expected of a resident agent. Their previous license indicates that the State does not question their fitness. Their method of compensation can in no way affect the performance of their duties either with reference to the insured or the insurer. In the absence of any reasonable basis for the discriminatory classification made by the statute and its restrictions imposed upon the plaintiffs, the decisions of this Court require it to be held unconstitutional. (*Smith v. Texas*, 233 U. S. 630; *Louisville Gas & Electric Company v. Coleman*, 277 U. S. 32).

POINT V.

Conclusion.

The decree below dismissing the plaintiffs' bill of complaint should be reversed, with directions that the court below enter a decree granting to the plaintiffs the relief prayed for in their bill of complaint.

Respectfully submitted,

JOHN LORD O'BRIAN,
ANDREW D. CHRISTIAN,
Counsel for Appellants.

WILLIAM I. MOREY,
WILLIAM P. STEWART,
ERNEST J. BROWN,
Of Counsel.

February, 1940.

Appendix.

CHAP. 218.—An ACT to amend and re-enact Section 4222, as heretofore amended, 4226-a, and 4235, as heretofore amended, of the Code of Virginia relating to insurance; to amend the Code of Virginia by adding thereto a new section numbered 4221-a defining certain terms as used in certain sections of the Code of Virginia and a new section numbered 4235-b, requiring registration of solicitors and a new section numbered 4235-c; and to repeal Section 168 of the Tax Code of Virginia.

Approved March 22, 1938

(Acts 1938, p. 343)

1. Be it enacted by the General Assembly of Virginia, That sections forty-two hundred and twenty-two, as heretofore amended, forty-two hundred and twenty-six-a, and forty-two hundred and thirty-five of the Code of Virginia, as heretofore amended, be amended and re-enacted and that the Code of Virginia be amended by adding thereto three new sections numbered forty-two hundred and twenty-one-a and forty-two hundred and thirty-five-b, and forty-two hundred and thirty-five-c so that said amended sections and new sections shall read as follows:

Section 4222. Insurance companies not to do business in Virginia except through resident agents or agencies; countersignature; exception; discriminations prohibited; agents not to make agreements not expressed in contracts; notice to companies to refrain from making discrimination; exceptions.—(a) Insur-

ance companies, legally authorized to do business in this State, except life, title and ocean marine insurance companies, shall not make contracts of insurance or surety on persons or property herein, except through regularly constituted and registered resident agents or agencies of such companies; no contract of insurance or surety covering persons or property in this State, except contracts of life, title and ocean marine insurance and except temporary binders covering other forms of insurance shall be written, issued or delivered by any such authorized insurance company, or any of its representatives, unless such contract is duly countersigned in writing by a resident agent or agency of such company; provided, however, that the countersignature of an insurance agency shall not be considered valid unless such countersignature be attested to in writing by a regularly constituted and registered resident agent of such company.

No State agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, or any renewal thereof, covering persons or property in this State, except contracts of life, title and ocean marine insurance; provided that this section shall not apply to railroad companies and other common carriers engaged in interstate commerce.

(b) No life insurance company doing business in this State shall make any discrimination in favor of individuals of the same class or of the same expectation of life, either in the amount of premium charged or in any return of premium, dividends

or other advantages. No policy of life insurance shall be issued or delivered in this State if it shall purport to be issued or to take effect, at an age lower than the actual age of the applicant at the time of the original written application.

(c) No agent, agency or company representative of any insurance company shall make any contract for insurance or surety or agreement as to such contract other than that which is plainly expressed in the contract issued. No insurance company or agent thereof shall pay, or allow or offer to pay, or allow as an inducement to any person to have issued any contract of insurance or surety, any rebate of premium, or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the contract.

(d) A person who is authorized by any company to solicit insurance or applications therefor shall in any controversy between the insured or his beneficiary and the company be held to be the agent of the company which issued the insurance solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

(e) If it shall appear to the satisfaction of the State Corporation Commission after due hearing upon notice, that any insurance company is issuing or making contracts that are directly or indirectly in violation of this section, the Commission shall require such company, and its officers and agents, to refrain within twenty days from making any such contract; provided, that nothing in this chapter shall be so construed as to forbid a company transacting industrial

insurance on a weekly payment plan with weekly collections of premiums at the homes of the insured, from returning to policyholders who have made premium payments directly to the company at its home office or district offices, the savings which the company effects through such direct payment, or to forbid a life insurance company from allowing its *bona fide* employees to receive a commission on the premiums paid by them on policies on their own lives.

Section 4226-a. Resident agents or agencies to collect full premiums and receive full commissions; exceptions thereto: non-resident insurance brokers; definition; exchange of business; not to sign blank contracts of insurance or surety; penalty; exceptions.—No resident agent or agency may write, countersign, issue or deliver any contract of insurance or surety upon persons or property in this State unless there shall be collected at the time the contract is written, issued or delivered, or within a reasonable time thereafter, the full premium on such contract, and the resident agent or agency shall be entitled to and shall receive the usual and customary commissions allowed on such contracts, provided that such resident agent or agency may write such contracts at the request only of such other resident agents or agencies, when such agent or agencies are properly licensed to transact the class of business involved in such exchange, and licensed non-resident insurance brokers who may be authorized by law to broker such contracts, and on exchange of business between resident agents or agencies in Virginia and licensed non-resident insurance brokers in other states the resident agent or agency in Virginia may allow or pay to such licensed non-resident insurance brokers, a commission not exceeding

fifty per centum of the resident agent's or agency's commission allowed on such business.

Every non-resident person, firm or corporation who shall solicit for compensation, directly or indirectly to be derived therefrom any contracts of insurance or surety on persons or property located in this State, except contracts of life, title or ocean marine insurance, either on account of any person desiring to effect any contract of insurance or surety, or on account of any insurance company, shall be deemed a non-resident insurance broker.

Such non-resident insurance broker shall pay the sum of one hundred dollars for the privilege of transacting such business; provided, that if, by the existing or future laws of any other state, an insurance agent of this State shall be required to pay for license or otherwise an amount greater or less than the amount required by this State from similar brokers of such other state by the then existing laws of this State, then and in every such case all insurance brokers of such other states shall be required to pay for license an amount equal to the amount of such charges and payments imposed by the laws of such other state upon insurance brokers of this State.

Before the Commission shall issue a license to any such non-resident insurance broker, the applicant shall make affidavit that he will not during the fiscal year place directly or indirectly any contracts of insurance or surety upon persons or property located in this State, except through duly licensed resident agents or agencies, and the Commission may, by such independent investigation as it may deem proper or necessary,

satisfy itself that the applicant for license is trustworthy and has sufficient knowledge of the business of insurance to conduct the same intelligently. The Commission may, for good cause, refuse to license any such non-resident insurance broker, or may, at any time it may come to its knowledge that any such broker has violated any provisions of the insurance laws of this State, revoke or suspend the license of said broker.

The license shall be issued by the State Corporation Commission upon the payment of the tax into the State treasury.

No regularly constituted and registered resident agent or agency for any insurance company shall sign or countersign any blank contract of insurance or surety; nor may such resident agent or agency allow or pay to any agent not regularly commissioned and registered, or to any unlicensed non-resident insurance broker any portion of any commission which he receives or is entitled to receive.

Any resident agent or agency violating any of the provisions of this section, upon conviction thereof, shall be fined not less than ten dollars nor more than five hundred dollars, and his certificate or certificates of registration shall be suspended or revoked.

This section shall not apply to title insurance companies nor to life insurance companies (except the casualty branches of such companies), nor to mutual insurance companies, nor to contracts of ocean marine insurance, nor to railroad companies and other common carriers engaged in interstate commerce.

Section 4235. Insurance companies to file list of agents, agencies, and company representatives; registration of agents; hearings and appeals; fine for soliciting contracts of insurance or surety without registration.—Every insurance company, except fraternal beneficiary associations, orders or societies, doing business in this State shall file annually with the State Corporation Commission, on or before the first day of July, and at such other times as they may be appointed, a list of the agents, resident agents, agencies and company representatives of said company, authorized to solicit insurance or surety for it in the State of Virginia, and each such agent, resident agent, agency or company representative shall be required to secure a certificate of registration from said Commission, for each company proposed to be represented, authorizing said licensee to represent said company for a period ending on the fifteenth day of July of each year. The fee for said registration shall be one dollar ($1.00) per annum for agents, resident agents or company representatives and two dollars ($2.00) per annum for agencies.

The Commission may, for good cause, refuse to register any such agent, resident agent, agency or company representative or may, at any time that it may come to its knowledge that any such licensee has misappropriated any premium entrusted to him, or has failed to apply said premium as directed by the holder or prospective holder of the contract of insurance or surety, or has been guilty of rebating, twisting the contracts of other companies, or misrepresenting the provisions of the contract he is selling or of the contracts of other companies, or has been guilty of fraudulent or dishonest practices, or has violated any

provisions of the insurance laws, or has otherwise demonstrated incompetency to transact business as an insurance agent, revoke or suspend the certificate of registration of said licensee. The commission may summon witnesses against any such licensee accused of wrong-doing and any licensee whose registration is refused may have a hearing before the Commission on any charge brought against him and may introduce evidence in his behalf. If the Commission revokes or suspends the certificate of registration of any licensee or refuses to register any licensee, such licensee may, as a matter of right, appeal to the Supreme Court of Appeals from such final order as the Commission may make, with reference thereto.

The certificate of registration of each agent shall state the date on which it was issued, the name of the agent, the name of the agency with which he is connected, if any, his address and the name of the company represented by him and shall extend only to the individual mentioned in it and not to any clerk or employee of said agent.

The certificate of registration of each agency shall state the date on which it was issued, the name of the agency, its address and the name of the company represented by it.

The certificate of registration of a company representative shall state the date on which it was issued, the name of the representative and his address and the name of the company represented by him.

Before the Commission shall issue a certificate of registration to any individual who has not heretofore

received such a certificate, it shall require the company desiring to appoint such individual as its agent to solicit insurance for it in this State, to certify by an executive officer or managing agent thereof, that such company has duly investigated the character and record of such individual, and satisfied itself that he is trustworthy and intends to act in good faith as an insurance agent; and the Commission may, by such independent investigation as it may deem proper or necessary, satisfy itself that an applicant for registration is trustworthy and has sufficient knowledge of the business of insurance to conduct the same intelligently.

Before the Commission shall issue a certificate of registration to any agency, who has not heretofore received such certificate, it shall require the company desiring to appoint such agency its representative to certify by an executive officer or managing agent, that it has investigated such agency and is satisfied that it is trustworthy.

Before the Commission shall issue a certificate of registration to any company representative who has not heretofore received such certificate, it shall require the company desiring to appoint such person as its representative, to certify by an executive officer that such company has duly investigated the character and record of such person, and is satisfied that he is trustworthy.

Any person soliciting for, or procuring application for, any insurance company authorized to do business in this State without having first procured a certificate of registration as either agent, agency, solicitor or

company representative shall be subject to a fine of not less than ten dollars nor more than one hundred dollars.

This section shall not apply to any mutual fire insurance company conducting business exclusively in this State and on a strictly mutual plan which pays its losses wholly from assessments upon its members and makes no division or distribution of its earnings or profits among its members.

The fees provided for in this section shall be collected by the Commission and shall be paid directly into the treasurer of the Commonwealth, and placed by the State Comptroller to the credit of the fund for the maintenance of the insurance division of the Bureau of Insurance and Banking.

Section 4221-a. Definition of agent, resident agent, agency, solicitor, special agent and/or company representative.—As used in sections forty-two hundred and twenty-two, forty-two hundred and twenty-six-a, forty-two hundred and thirty-five, and forty-two hundred and thirty-five-b, the following words and/or phrases shall have the following meaning:

"Agent" means any individual, who solicits, negotiates or effects in this State, on behalf of any insurance company or other insurer, contracts of insurance or surety.

"Resident agent" or "resident insurance agent" means an individual agent, whose residence and principal place of business are located in this State, who is authorized by and on behalf of an insurer to trans-

act business as an insurance agent and contract in the name of the insurer; provided, that in cities and towns located partly within and partly without this State the requirements of this section as to residence and principal place of business of agents shall be construed as met if such agent shall have his residence or principal place of business in any part of such city or town, and the State in which such city or town is located shall have established, by law or regulation, like requirements as to residence and place of business of such agents; and provided further that this definition shall not apply to life insurance agents.

"Solicitor" or "insurance solicitor" means any individual, whose residence is located in this State, engaged in the solicitation of contracts of insurance or surety for any licensed agent or agency; provided, that in cities and towns located partly within and partly without this State the requirements of this section as to residence shall be construed as met if such solicitor shall have his residence in any part of such city or town, and the State in which such city or town is located shall have established, by law or regulation, like requirements as to residence of such solicitors.

"Agency" or "insurance agency" means any firm or corporation authorized by and on behalf of an insurer to transact an insurance business in the name of such firm or corporation and whose business is conducted and solicited by regularly constituted and registered resident agents or solicitors.

"State agent," "special agent" or "company representative" means any person, who acts in this State for and on behalf of any insurance company or other

insurer, in the solicitation, inspection or servicing of risks assumed or to be assumed by said company; provided this definition shall not apply to life insurance companies, except the casualty branches of such companies.

Section 4235-b. Agents and agencies to file list of solicitors; registration of solicitors; hearings and appeals.—Every insurance agent and every insurance agency doing business in this State shall file annually with the State Corporation Commission on or before the first day of July, and at such other times as they may be appointed, a list of the solicitors of said agent or agency, if any, authorized to solicit contracts of insurance or surety for it in the State of Virginia and each such solicitor shall be required to secure a certificate of registration from said Commission for each company represented by said agent or agency for which he is to solicit contracts of insurance or surety authorizing him to represent said agent or agency for a period ending on the fifteenth day of July of each year.

The fee for said registration shall be one dollar ($1.00) per annum. No person shall be granted a certificate of registration as solicitor: (1) to represent more than one agent or agency at the same time, (2) if he resides or has his place of business in the same city, town or community in which the agent or agency employing him is located, unless he devote his full time to the work of said agent or agency, (3) if such person holds a certificate of registration as an agent issued under section forty-two hundred and thirty-five.

The certificate of registration of each solicitor shall state the date upon which it was issued, the name of the solicitor, the name of the agent or agency for which he is to solicit and the name of the company represented by said agency. The Commission may, for good cause, refuse to register such solicitor, or may, at any time that it may come to its knowledge that any solicitor has misappropriated any premium entrusted to him, or has failed to apply said premium as directed by the holder or prospective holder of any contract of insurance or surety, or has been guilty of rebating, twisting the contracts of other companies, or misrepresenting the provisions of the contract he is selling, or of the contracts of other companies, or has been guilty of fraudulent or dishonest practices, or has violated any provisions of the insurance laws, or has otherwise demonstrated incompetency to transact business as an insurance solicitor, revoke or suspend the certificate of registration of said solicitor. The Commission may summon witnesses against any solicitor accused of wrongdoing and any registered solicitor may have a hearing before the Commission on any charge brought against him and may introduce evidence in his behalf; but if the Commission revokes or suspends the certificate of registration of any solicitor, then such solicitor may, as a matter of right, appeal to the Supreme Court of Appeals from such final order as the Commission may make, with reference thereto.

Before the Commission shall issue a certificate of registration to any individual who has not heretofore received such a certificate, it shall require the agent, or, if it be an agency then the agency, by a duly authorized officer or representative thereof, desiring to appoint such individual as its solicitor, to certify that

such agent or agency has duly investigated the character and record of such individual, and is satisfied that he is trustworthy and intends to act in good faith as an insurance solicitor; and the Commission may, by such independent investigation as it may deem proper or necessary, satisfy itself that an applicant for registration is trustworthy and has sufficient knowledge of the business of insurance to conduct the same intelligently.

The fees provided for in this section shall be collected by the Commission and shall be paid directly into the treasury of the Commonwealth, and placed by the State Comptroller to the credit of the fund for the maintenance of the insurance division of the Bureau of Insurance and Banking.

Section 4235-c. Exceptions.—Nothing contained in sections forty-two hundred and twenty-one-a, forty-two hundred and twenty-two, forty-two hundred and twenty-six-a, forty-two hundred and thirty-five and forty-two hundred and thirty-five-b shall be construed as applying to reciprocal or inter-insurance exchanges, their attorneys or representatives, except as provided in section one of an act entitled an act to authorize and regulate the exchange of certain classes of reciprocal and inter-insurance contracts among individuals, partnerships and corporations, empowering corporations generally to make such contracts, regulating process in suits on such contracts, and prescribing certain fees, taxes and licenses, and penalty for violation, approved March twenty, nineteen hundred and eighteen, as last amended by an act approved March twenty-nine, nineteen hundred and thirty-four.

2. Be it further enacted by the General Assembly of Virginia, That section one hundred and sixty-eight of the Tax Code of Virginia be, and the same is hereby, repealed.

"§4180. *Companies insolvent or violating law; hearing thereon; when license suspended or revoked; publication of judgment; appeals.* If the State Corporation Commission of of the opinion from any examination, or from any other evidence or information coming to its knowledge that any domestic, foreign or alien insurance or surety company, doing business in this State, is in an insolvent condition, or that it has failed to comply with the provisions of law applicable to such company, or, if any insurance company, or its officers or agents fails or refuses to submit to any examination provided by the laws of this State or fails or refuses to furnish satisfactory evidence of its financial and business standing, or solvency, or fails or refuses to perform any lawful requirements imposed by the laws of this State, the Commission shall, if such company is a foreign or alien company, and an applicant for a certificate of authority to commence or transact business in this State, or if a domestic company, and an applicant for a certificate of authority to commence or transact business in this State, refuse such license or certificate of authority, as the case may be; and if it be a foreign or alien company already licensed and permitted to do business in this State, or a domestic company already authorized to commence and transact business in this State, the commission shall advise such company of such condition, failures or refusal and give ten

days' notice to the said company to appear before the commission to be heard upon the matters complained of at which time the company shall be afforded an opportunity to introduce evidence and to be heard in reference thereto.

If upon such hearing the commission shall be of the opinion that the matters complained of by the commission are true, it shall revoke or suspend, as may seem to the commission proper under the circumstances of the case the license of the said company to transact business in this State, and shall on final judgment, unless an appeal be taken in sixty days, cause notification thereof to be published in one or more newspapers published in this State.

If any insurance company doing business in Virginia be declared insolvent by any court of any State, or be declared insolvent by the insurance department or commissioner of any other State and thereafter prohibited from doing business in such State, the State Corporation Commission may immediately suspend the license of the company to do business in Virginia, pending a hearing called and held as hereinabove provided.

No new business shall be done by any such company, or its agents, while any such order revoking or suspending its license or certificate of authority to do business in this State shall be in force, nor until its license to do business is restored by the State Corporation Commission.

From the action of the commission refusing, revoking or suspending the license of any company to do

business in this State, there shall be an appeal to the Supreme Court of Appeals of this state as provided in section thirty-seven hundred and thirty-four of this Code. (1906, p. 122, ch. 1, §13; 1920, p. 22; 1936, p. 257.)"

"§4223. *Penalties for violating preceding section; appeal.*

Any company, or officer, or agent of any such company, legally admitted to do business in Virginia, violating any of the provisions of the preceding sections shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense; and when any such company shall have been found to have so violated said section, upon the first offense, its license to do business in this State shall also, after proceeding in the manner prescribed by section forty-one hundred and eighty, be suspended by the State Corporation Commission for a period of ninety days, subject to the right of appeal by such company as is provided; and the Commissioner of Insurance of this State shall, after final judgment, or unless an appeal be taken in thirty days, be required to cause a notice of such suspension of authority to do business in the State to be published in any paper of general circulation published in the city of Richmond, and after the publication of such notice, it shall be unlawful for any person, agent, firm or corporation or any such insurance company or companies, to procure any new applications for insurance in such company or companies, or to issue any policies therein, pending the reinstatement of such company or companies' authority to do business in this State. And

any company or companies whose license may be so suspended by the State Corporation Commission shall not be again permitted to do business in Virginia until all taxes, costs and penalties, due on said conviction, shall have been paid, together with any expenses that may be due under the provisions of section forty-two hundred and twenty-five, to the Commissioner of Insurance. (1906, p. 122, ch. 2, §35.)"

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 26 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592.

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, *et al.*,

Appellants,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER and LESTER HOOKER, etc., *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

REPLY BRIEF OF APPELLANTS.

JOHN LORD O'BRIAN,
ANDREW D. CHRISTIAN,
Counsel for Appellants.

WILLIAM I. MOREY,
WILLIAM P. STEWART,
ERNEST J. BROWN,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX.

PAGE

I. The real purpose of the statute is to increase the income of Virginia insurance agents 3

II. The statute does prohibit the making of contracts outside of the state covering risks in Virginia 7

III. The statute cannot be justified as a proper exercise of regulatory power 8

IV. In making a contract outside of Virginia the license granted by Virginia to do business in that state is not exercised 17

Summary 18

Citation of Cases.

American Smelting etc. Co. v. Stettenheim, 164 N. Y. S. 253 11

Bothwell v. Buckbee, Mears Co., 275 U. S. 274.... 17

Compania General de Tabacos v. Collector, 275 U. S. 87 17

Equitable Life Assurance Society v. Pennsylvania, 238 U. S. 143..... 18

Fidelity & Deposit Company v. Tafoya, 270 U. S. 426 .....10, 14

St. Louis Cotton Compress Co. v. Arkansas, 260 U. S. 346 10

Springfield Fire & Marine Ins. Co. v. Holmes (not yet reported) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592.

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, *et al.*,

Appellants,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER and LESTER HOOKER, etc., *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

REPLY BRIEF OF APPELLANTS.

This brief is filed in reply to the contentions made in the brief of the appellees, and in particular to the following contentions there presented:

1. That the challenged statute does not prohibit the making outside Virginia of contracts which include Virginia risks.

2. That Virginia has the power to regulate the negotiation and also the terms of such contracts.

3. That the challenged statute embodies a regulatory power valid as an exercise of the police power.

4. That Virginia can control and regulate such out-of-state negotiations and contracts because they are made in exercise of a franchise granted by Virginia.

Conflicting statements of fact in the briefs of the parties may be explained by the circumstance that most of the citations of fact in the briefs of appellants refer to the Findings made by the Court below, while more than four-fifths of the citations made by appellees refer to items of testimony. Some of the more striking of the statements are without support of substantial evidence in the record.*

The "Montana Case."

Attention is respectfully called to the decision in *Springfield Fire & Marine Insurance Co. v. Holmes* rendered March 16, 1940, by a three judge statutory Court in the District of Montana. The Court, consisting of Haney, C. J., Pray, D. J. and Baldwin, D. J., there held unconstitutional a statute of Montana, in some respects similar to the statute here under review, on substantially the same legal grounds urged in Point III of appellants' main brief. Copies of the opinion of that Court will be handed up on argument.

*Cf. That rebating is customary in New York (Br. 75); that in New York agents have been put out of business by the brokers (Br. 76); that Virginia has forbidden the use of multiple coverage policies (Br. 157), etc.

I.

THE REAL PURPOSE OF THE STATUTE IS TO INCREASE THE INCOME OF VIRGINIA INSURANCE AGENTS.

Appellants contend that the main and the only effective purpose of the statute is to ensure the payment of full producers' commissions to resident agents of Virginia upon insurance written out of the State and covering Virginia risks regardless of whether or not they have in fact produced the business.

Replying to this contention, appellees specify five specific purposes sought to be accomplished by the statute (Br. 13-14). Three of these purposes are frankly admitted to be attempts to adjust alleged competitive inequalities between residents of Virginia and persons or corporations engaged in business outside that state. The other two purposes are defined as attempts to secure the services of Virginia resident agents for the benefit of holders of insurance contracts covering risks in Virginia, for the benefit of the state as an aid in providing policy and fire protection, etc., and "to assist in bringing within the regulatory control of the State as to rates, taxes and other matters, insurance contracts negotiated *or made* outside the State" (Br. 14).

The Court below, in reviewing these purposes, made no finding that any of the competitive disadvantages complained of were due to discriminations or other practices which were in and of themselves wrongful or unlawful. Nor did the Court hold that they constituted unfair competition. Other purposes attributed to

the statute in appellees' brief are the desire (1) to break up the centralization of insurance business in New York City and other large cities (Br. 21-22); (2) to restrict and limit the business of non-resident brokers who are declared to be parasites on the business (Br. 10) and (3) to equalize the cost of insurance in Virginia by increasing the cost of insurance written on policies outside the state which include Virginia coverage (Br. 78), and to reduce the alleged advantage which a corporation doing a nationwide business enjoys over its Virginia competitor (Br. 106).

All of the alleged evils complained of by appellees result from the use of master policies or multiple coverage (sometimes called "hotch-potch") contracts. These contracts are in general use throughout the country because of the advantages in convenience and in lower cost which they afford to the assured. The statute makes no mention of these policies. Appellees criticize their use (Br. 157); but they do not assert that the purpose of the statute is to abolish them.

It is significant that the Court made no finding that the laws of the State of Virginia had actually been violated in any instance because of the use of these policies.

The Court below believed that the writing of out-of-state master or multiple coverage contracts made it difficult for Virginia to enforce certain of its laws dealing with insurance rates, because it might be possible to dilute the rate paid in Virginia by means of a concession in rate made in another state (Op. R. 52-53). The Court however specifically found that distinct benefits to the assured resulted from the use of these

contracts and that these benefits could not be had if the separate exposures were insured through local resident agents (Op. 50).

Respondents err in intimating that the use of these contracts is in any way illegal or improper (Br. 157). Virginia in the past has recognized and sanctioned their use. The former statute required that all forms of insurance on Virginia risks should be issued on a contract separate and distinct from insurance covering risks in other states (R. 543). But the State Insurance Commissioner, by official ruling, held that where a (master) contract was written out of the state covering operations in several states, including Virginia, the Virginia statute would be complied with if the Virginia coverage were written on a separate Virginia policy, schedule or declaration, which, in turn, must be written in full compliance with the resident agency laws of Virginia (R. 568). The former "Resident Agency Law" was enacted with the declared purpose of requiring companies to do business in Virginia through resident agents, but the State Insurance Commissioner held that the contract signature required by this statute to be made by a resident agent might be made by salaried employees of the issuing company who were registered as agents by the state (R. 543-544).

As the law stood therefore prior to the enactment of the new statute, companies were permitted to write master or multiple coverage contracts including coverage within the State of Virginia, provided only that that portion of the insurance which covered the Virginia risk should be identified and written in the form of a separate contract or declaration and written at the

rate required by Virginia law and countersigned either by a resident agent or a salaried employee of the company who was a licensed agent.

Appellants respectfully submit: (1) That by these former statutes, regulations and interpretations the State of Virginia exhausted, if not exceeded, all of its constitutional power to deal with or regulate out-of-state master or multiple coverage contracts. (2) That in any event, the challenged statute will not alleviate inequalities or disadvantages which may result from the use of such contracts.

The provisions of the previous statutes, rulings and interpretations seem to confirm the contention of the appellants that the only real purpose of the new statute was to compel payment to resident agents of producer's commissions for countersigning the separate Virginia contract negotiated out-of-the-state. The State Insurance Commissioner has now ruled that under the challenged statute the separate Virginia contract may be signed by any full time employee of a resident agent acting under power of attorney (R. 567). The signing or countersigning of the contract under the new statute is therefore a perfunctory act and the statute imposes no further responsibility or duty upon the resident agent.

II.

THE STATUTE DOES PROHIBIT THE MAKING OF CONTRACTS OUTSIDE OF THE STATE COVERING RISKS IN VIRGINIA.

At the outset Appellees' brief asserts that the challenged statute does not forbid or undertake to regulate the making of contracts outside the state (Br. 26). This attitude is later modified to the point of asserting that Virginia has jurisdiction to regulate the making of such contracts (Br. 68).

> "Insurance companies, legally authorized to do business in this State, except life, title and ocean marine insurance companies, *shall not make* contracts of insurance or surety on persons or property herein, *except through* regularly constituted and registered *resident agents or agencies* of such companies."

This is the first, and key sentence, of Section 4222 (a) of the Code of Virginia, asserted by the appellants to be unconstitutional. Subsequent sections impose penalties for the violation of its provisions. Clearly and on its face, this provision prohibits the plaintiffs from making, outside of Virginia, contracts of insurance and surety on persons or property in Virginia. The District Court so read its clear provisions (Op. R. 43). Yet the brief of Appellees contains lengthy argument upon the metaphysical distinction that the statute does not prohibit the doing of acts outside of Virginia, but only requires that they be done within Virginia. The fact remains, however, that if the appellants do make, outside of Virginia, contracts of insurance or

surety covering property or persons in Virginia, they will be acting in a manner prohibited by the statute and are subjected to penalties imposed by it. The fact also remains that this Court has repeatedly held such statutory provisions beyond the power of a state, and unconstitutional (App. Br. 19-23).

III.

THE STATUTE CANNOT BE JUSTIFIED AS A PROPER EXERCISE OF REGULATORY POWER.

A large part of the Appellees' brief (pp. 30-108) is apparently written on the assumption that the statute here challenged by the appellants is one regulating the performance and servicing of insurance and surety contracts, since the argument is directed to the claim that Virginia has authority and power to impose such regulation. Yet the appellants complain of no such regulation. Careful examination of the challenged statutes, set forth in the Appendix to plaintiffs' brief (pp. 49-66) does not reveal any provision regulating or even mentioning performance or servicing of the contract. In fact there are no such statutory regulations.

Appellants assert that the requirements of the statute bear no necessary or intrinsic relation to any "evils" which it is within the power of Virginia to correct (Br. 14). As defined by Appellees (Br. 14) the only two vital requirements of this statute are (1) that the separate policy or declaration covering the Virginia risk shall be countersigned by a resident agent, and (2) that this resident agent shall be paid

the full producer's commission, all of which he must retain unless the non-resident broker who in fact produced the business was licensed as such by Virginia. In reply to this contention by appellants, respondents list six alleged evils which they assert the new statute will eliminate.

1. Rate-cutting by the companies.

Appellees assert that the new statute will prevent rate cutting by the companies. Master policies, or multiple coverage policies, covering risks in more than one state are "equity rated" or "experience rated"—that is the aggregate risks covered are rated on the basis of the past records of the assured in accident and loss on all the combined risks (Op. R. 50). Sometimes this rating is changed retrospectively because of this experience record. Virginia fixes by statute the rate to be charged for three types of insurance, viz.:—Surety, Workmen's Compensation and Automobile liability. It fixes no rates as to other types of casualty insurance. Appellees argue that, although the Virginia risk is embodied in a separate contract written and signed by a resident agent on which the full premium based on the Virginia statutory rate has been paid, the assured will in effect be receiving a rate concession unlawful under the Virginia law if, contemporaneously, he receives through the master contract a lower rate than the ordinary rate (although a lawful rate) upon other risks in other states. But assuming that the over-all rate so resulting does "dilute" the charge made for the Virginia coverage, this is not due to any act done within Virginia jurisdiction, nor is it due to any unlawful or wrongful act.

The *St. Louis-Compress case* (262 U. S. 346) and the *Tafoya case* (270 U. S. 426) appear to hold by analogy that Virginia cannot regulate the cost or charges for insurance made in other states or give extra-territorial effect to its statutes. But assuming that Virginia had jurisdiction to prohibit the making outside of Virginia of a master contract covering a Virginia risk at lower cost than the rate prescribed by it, the new statute will not remedy the situation. For no statute of Virginia can prevent an assured who has paid the full legal rate on his risks located in Virginia from contemporaneously securing a master contract covering all of his risks located in other states. Presumably the premium for such a master contract would be adjusted to reflect the benefit to the assured of his past experience upon the various risks covered, including the past record within Virginia. Even under the new statute, therefore, the cost to the assured of his aggregate coverage would be the same as if such master contract included the Virginia risk.

2. Rebating of commissions by non-resident brokers.

Throughout respondents' brief all forms of bargaining reductions or adjustments or concessions in the amount of commissions are indiscriminately termed "rebates" or "unlawful discriminations." A sinister aspect is thus given to lawful transactions occurring in the ordinary course of business.

In the proper sense of the word "rebate" there is no evidence, except hearsay, in the record that "rebating" was practiced in writing out-of-state policies. Reduced premiums in master contracts are not the result of "rebates." What appellees are complaining of is not rebating, but the process of bargaining

over the aggregate cost of master policies, or multiple coverage contracts. In this process concessions in price are commonly made. These concessions frequently include contributions by the broker of a portion of his usual commissions. The opinion of the Court below fully described the elements and business practices which result in cheaper cost of master contracts (Op. 50). The Court found that in fixing a premium for a master contract, the insurance company gives consideration to the assured's experience rating in the various fields of risk and thus is able to arrive at a reduced premium to which a reduction in the agent's commission is usually a contributing factor (Op. R. 50). It is by offering this reduced premium, which may include a reduction of the producer's commission, that the business is sold. What the appellees chiefly complain about is not a "rebate" of commission but a reduced premium arrived at by the process of competitive bargaining.

Appellees at one point assert (without record reference) that "rebating" is a customary practice in the State of New York (Br. 75). There is no substantial evidence and the Court below made no finding to this effect. Rebating was formerly forbidden within the State of New York on premiums paid on risks located within that state. *American Smelting, etc. Co. v. Stettenheim*, 164 N. Y. S. 253, was decided under the old law. The amended New York statute (L. 1939, Chap. 882, Sec. 188), now prohibits rebating on commissions on all policies issued within that state without regard to the location of risks.

Except in the states and in the few lines of insurance where the rate has been fixed by law there is nothing illegal or improper in the practice of bargaining as to the rate to be charged for the remaining risks.

This practice operates invariably to the benefit of the assured and it is an ordinary incident of competition. The larger the business of the assured, or the larger the variety of risks involved, or the more experience and expert knowledge the broker possesses, the greater will be the legitimate competitive advantage of the producing broker in driving a bargain for his client, the assured. The fact that the business of insurance may be charged with a public interest does not affect this basic consideration provided that in each state any prescribed legal rate is observed.

3. Unfair competition between non-resident brokers and Virginia agents.

The Court below, although finding that competitive advantage accrued in certain circumstances to some out of state producers, made no finding of unfair competition or of unlawful discrimination as between non-resident brokers and Virginia agents. Appellees assert that companies now favor the New York broker, because of his volume of business, by quoting him a better rate on a master policy than the companies would quote to a Virginia agent. It is claimed that the statute will adjust or ameliorate this competitive advantage by requiring the payment of a full commission to a Virginia agent. In support of this claim of discrimination appellees cite the testimony (chiefly hearsay) of Mr. McNeil (Br. 624-5). But the Court below found that where the Virginia agent is not able to obtain the lower rate, his failure results from his inability to acquire the requisite information concerning the risk upon which the company bases the lower rating. Mr. McNeil's testimony is to this effect (R. 625). In any event, there is no finding that the com-

panies discriminate against a Virginia agent by quoting lower rates to New York brokers than to Virginia brokers. On the contrary, the Court found that the competitive disadvantage of the Virginia agent was due to his lack of the information and the experience requisite to make him expert in the rating and underwriting of multiple risks (Op. R. 51).

Assuming that the Virginia agent in certain cases is now at a competitive disadvantage, the effect of the new statute will be to give the Virginia agent a competitive advantage over all other agents writing multiple coverage contracts. Under this statute the Virginia agent writing a master contract can quote a rate which will include the payment of only one commission, whereas the non-resident agent and broker in the future must quote a rate which shall include the payment of the usual commission to himself, and in addition, at least one-half of the customary commission to some resident Virginia agent. Thus in solicitation for equity rated master contracts which include coverage in Virginia and other states, this statute, to this extent, will place the Virginia agent in a preferred position in his competition with non-resident brokers agents.

4. Unfair competition between foreign insurance company groups and Virginia insurance companies.

Virginia insurance companies are said to labor under the handicap of having no group of affiliated fire, casualty and surety companies, so that they are unable to compete with foreign companies in the writing of master contracts. This disadvantage will be alleviated, it is claimed, by preventing the non-resident broker from reducing his commission and by the enact-

ment by other states of similar statutes preventing their resident brokers from rebating commissions on contracts covering risks in other states. (Br. 78). There is no prohibition in Virginia against domestic companies affiliating in groups. As stated, New York now prohibits rebating of commissions on contracts covering risks situated in states other than New York. It accomplished this by a statute similar to Virginia's rebating statute (Sec. 4222 (c) Code of Virginia)—not by a statute requiring payment of a commission to a New York agent.

Appellees concede that the Virginia statute will not relieve the Virginia domestic insurance companies from whatever disadvantage they are now under. The only result in this regard anticipated by appellees is the nebulous expectation that: "Judicial confirmation of the state's jurisdiction to exercise its police power in connection with its out-of-state transactions will make possible the passage of legislation which will correct the evil." (Br. 78-79).

5. Depriving Virginia agents and citizens of insurance agency commission business belonging to them.

Appellees assert that insurance written on risks located in Virginia is "Virginia business" belonging to the citizens of that state (Br. 79). Here as frequently elsewhere appellees confuse the property insured with the business of writing insurance upon it or upon risks incidental to its use.

They assert that one "evil" to be relieved by the statute is the placing in New York of insurance upon a Virginia risk without payment of a commission to some Virginia agent (Br. 80). In the *Tafoya* case

(270 U. S. 426) New Mexico had endeavored to correct the same "evil". Its statute provided for the suspension of any company paying a commission to any one not a resident of New Mexico for writing a policy covering a New Mexico risk. This Court held that statute unconstitutional. New Mexico prohibited payment of a commission to any one other than a resident of New Mexico. Virginia has affirmatively required payment of the commission to a Virginia resident agent.

6. The present lack of a Virginia agent to service Virginia risks contracted for outside the state.

The work done by a Virginia commission agent in servicing a contract is work done by him when, and only when, he is the originator or producer of the business. Appellees complain that hitherto neither the insurer nor the broker has had the benefit of the services of a Virginia local agent in servicing a multiple coverage contract (Br. 80). But the Court below specifically found that neither the insurer nor the assured had any desire or need for the services of a Virginia agent in the servicing of the contract (Op. R. 56).

Both appellants and the Court below speak of the possible or probable good which will result from the "association of a resident agent" with the insurance contract (Br. 39; Op. R. 55, 56). This is a misleading expression, because the statute imposes no duty or responsibility upon such agent, and the Court has found that neither the insurer nor the assured need or desire his services. The statute requires that at the inception of the contract he is to be paid the full producer's commission. The only act required of him by the stat-

ute is the placing of his signature upon the contract and the State Insurance Commissioner has ruled that this signature may be attached by any of his full time employees acting under power of attorney.

It is important to note also that there is no legal method by which the insurer or the assured can compel the resident agent to perform any service in connection with the policy signed by him or his employee.

Complaint is also made that Virginia has been deprived of the services of her resident agents in the prevention of accidents when Virginia risks are covered by master contracts made outside the state (Br. 80). On the other hand, there is no finding by the Court that the services which the resident agent may render will result in the reduction of accidents. The finding of the Court is that the lower premiums for master policies are the result of "improved loss experience from scientific servicing of risks" (Op. R. 50)—services not rendered by the local resident agents. The inference is clear that the association of these agents in contracts covering Virginia risks will not assist in the prevention of accidents.

It is believed that a casual comparison of the two vital requirements as to signature and commission of

the challenged statute with the so-called evils listed above demonstrates how insubstantial and uncertain of effect is the relationship between the statute and these so-called evils. That there is no intrinsic or legitimate relationship seems clear, because the statute neither forbids the use of multiple coverage contracts nor does it in terms purport to regulate in any manner any act to be done within the state in the carrying out of the contract.

IV.

IN MAKING A CONTRACT OUTSIDE VIRGINIA THE LICENSE GRANTED BY VIRGINIA TO DO BUSINESS IN THAT STATE IS NOT EXERCISED.

The appellees contend that the making outside of Virginia by a foreign corporation of a contract of insurance covering a Virginia risk is an exercise of the license granted by Virginia to the foreign corporation to do business within that state (Br. 48 *et seq.*). In other words, Virginia contends that the license granted a foreign corporation empowers Virginia not only to regulate the performance in Virginia of a contract made outside the state, but also to regulate those terms and provisions (as to premium and commission) of such a contract which do not require performance and are not performed within Virginia. For such contention, reliance is placed upon *Bothwell v. Buckbee, Mears Co.*, 275 U. S. 274 and *Compania General de Tabacos de Filipines v. Collector of Internal Revenue*, 275 U. S. 87. The *Bothwell* case has been fully discussed in our main brief (pp. 26-29). The question determined in the *Compania General de Tabacos* case

was solely the right of the territory, in taxing the foreign corporation for the privilege to do business there, to consider in *measuring such tax* a premium on a contract of insurance written outside of the territory but covering property therein. That question Chief Justice Taft said was a close one, and it was decided on the authority of *Equitable Life Assurance Society v. Pennsylvania*, 238 U. S. 143. In that case Mr. Justice Holmes, after assuming that the state could not prevent such contracts, stated that the only question concerned was the mode of measuring the tax.

In no reported case has any Court given extra-territorial effect to a state statute in the manner or to the degree contended for by the appellees. On the facts as stated above and also in appellants' main brief, it is submitted that the powers of the state of Virginia cannot constitutionally be expanded to support this particular contention of the appellants as to extra-territorial jurisdiction.

SUMMARY.

Appellants' claims are, basically, two-fold: (1) That Virginia has no power to prohibit and penalize their making contracts outside the State, and (2) That, in any event, Virginia may not impose upon the plaintiffs an obligation to pay a local agent for the perfunctory act of countersigning a policy produced by another the usual and customary producer's commissions.

It is submitted that appellees' brief deals with neither of these claims. Instead of the first, counsel's brief, as above stated, deals with the constitutional justification for an imagined statute regulating the per-

formance and servicing of contracts. Instead of the second, appellees rest upon the possibility that the countersigning resident agent might do the work the producer does, though it is clear, and the Court below has so found, that the statute imposes no such duty upon the countersigning resident agent. More important the Court found affirmatively that neither the insured nor the insurer desires him to perform such services, and that in many instance the Virginia resident agent is not equipped or able to perform them.

Since the matters considered in the appellees' brief thus seem, to a large extent, foreign to the issues involved in this case, a further reply to its arguments would serve no relevant purpose.

However, we do emphasize the implications of this statute as they extend beyond its immediate operation. On pages 13 and 14 of their brief, the appellees have set forth what they conceive to be the purposes of this statute. Apparent from this statement and from others above cited on appellees' brief is the fact that Virginia has, by this statute and the penalties it imposes, attempted to divert business from other states and into Virginia. In other words, this is a tariff act, a tariff to foster local business and strike down foreign competition. The brief of appellees expresses this idea frankly. "States compete for business to be carried on within their borders, just as nations compete in world commerce" (Br. 79). That competition exists one may not doubt. But if the states may implement this competition by legislation to confine business within their borders and to divert it from others, the separatist tendencies thus sanctioned by statute, and the statutory recriminations thus invited, will leave

little of the federal system contemplated by the Constitution.

We respectfully submit that the decisions of this Court referred to in our main brief holding statutes similar to Virginia's to be unconstitutional have had as their basis the realization that the extra-territorial application of state laws, and the attempt thereby to shepherd all possible business within the boundaries of particular states, is inconsistent with the idea of polity based upon the complete freedom of intercourse and interdependent relationships of all citizens.

Respectfully submitted,

JOHN LORD O'BRIAN,
ANDREW D. CHRISTIAN,
Counsel for Appellants.

WILLIAM I. MOREY,
WILLIAM P. STEWART,
ERNEST J. BROWN,
Of Counsel.

March, 1940.

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 18 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., *Appellants*

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL., *Appellees*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR THE APPELLEES

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
PART I.	
FACTS AND LEGAL PRINCIPLES RELIED ON BY APPELLEES	
OPINION BELOW	2
GROUNDS OF JURISDICTION	2
STATEMENT OF THE CASE	2
CUSTOMS AND PRACTICES WITH RESPECT TO VIRGINIA CONTRACTS PRODUCED IN NEW YORK	5
ESTABLISHED CUSTOMS AND PRACTICES OF THE SURETY AND CASUALTY INSURANCE BUSINESS	14
ARGUMENT	22
VIRGINIA'S OFFICIAL INTERPRETATION OF THE STATUTES INVOLVED	25
CONSTITUTIONAL QUESTIONS INVOLVED	26
SUMMARY OF ARGUMENT	27
I. THE STATUTORY PROVISIONS HERE CHALLENGED, (AS APPLIED TO VIRGINIA COVERAGE CONTRACTS NEGOTIATED OUTSIDE OF THE STATE), DO NOT CONSTITUTE AN ATTEMPT BY VIRGINIA TO EXTEND HER REGULATORY JURISDICTION BEYOND HER BORDER. THE REGULATIONS ARE RESTRICTED TO ACTS OF THE INSURANCE COMPANY AND ITS AGENTS TO BE PERFORMED WITHIN THE STATE, PURSUANT TO AND AS A CONSEQUENCE OF THE NEGOTIATION OF THE CONTRACT OUTSIDE OF THE STATE	30

Page

II. THE FACT THAT A VIRGINIA COVERAGE INSURANCE CONTRACT IS NEGOTIATED AND MADE OUTSIDE THE STATE DOES NOT IMPAIR VIRGINIA'S JURISDICTION TO REGULATE THE INSURANCE COMPANY'S ACTS AND TRANSACTIONS PERFORMED OR TO BE PERFORMED WITHIN THE STATE IN CONNECTION WITH OR PURSUANT TO SUCH CONTRACT 39

A. All Casualty and Surety Policies and Contracts Covering Virginia Risks Require or Contemplate Acts of Performance in Virginia 41

B. The Making Outside of Virginia of an Insurance Contract Which Contemplates or Requires the Doing by the Insurance Company of Acts in Virginia, Constitutes, as a Matter of Law, an Exercise of the Insurance Company's License Right, Franchise, or Privilege of Doing an Insurance Business in Virginia 48

C. The Making Outside of Virginia of a Contract of Insurance Involving an Exercise of a Foreign Insurance Company's License, Right or Privilege of Doing Business in Virginia Brings the Contract Within the Jurisdiction and Regulatory Police Power of Virginia 53

III. VIRGINIA MAY PROHIBIT THE DOING IN VIRGINIA BY AN INSURANCE COMPANY LICENSEE OF ANY ACT IN CONNECTION WITH OR IN THE PERFORMANCE OF A VIRGINIA COVERAGE CONTRACT MADE BY IT OUTSIDE THE STATE IN VIOLATION OF VIRGINIA LAWS, BY THE IMPOSITION OF A FINE OR BY REVOCATION OF SAID COMPANY'S LICENSE TO DO BUSINESS IN THE STATE 59

IV. THE FACT THAT A VIRGINIA COVERAGE CONTRACT, MADE BY AN INSURANCE COMPANY LICENSEE IN VIOLATION OF VIRGINIA LAWS, IS MADE OUTSIDE THE STATE DOES NOT IMPAIR THE JURISDICTION OF VIRGINIA TO REVOKE THE COMPANY'S LICENSE TO DO BUSINESS IN THE STATE BECAUSE OF MAKING SUCH CONTRACT IN VIOLATION OF HER LAWS 61

Page

V. THE OBJECTS AND PURPOSES SOUGHT TO BE ATTAINED BY THE CHALLENGED LEGISLATION ARE LEGITIMATE AND PROPER, AND THE MEANS EMPLOYED TO THAT END ARE NOT ARBITRARY AND CAPRICIOUS BUT ARE REASONABLE AND APPROPRIATELY ADAPTED THERETO 69

The Evils to be Remedied 72

(1) *Rebating or rate cutting by insurance companies to assureds* 73

(2) *Rebating to assureds part of their commission by nonresident brokers* 75

(3) *Unfair or unlawful competition between the nonresident brokers and Virginia resident agents* 75

(4) *Unfair and unlawful competition between foreign insurance company "groups" and Virginia insurance companies* 77

(5) *The removing from Virginia of a large part of her insurance agency commission business and depriving her insurance agents and citizens generally of the benefits incident thereto, and centralizing this business in New York* 79

(6) *The lack of an impartial Virginia agent to service Virginia risks contracted for outside the State* 80

The Remedy Provided by the Statute is Reasonable 81

VI. THE BRANCH MANAGER APPELLANTS HAVE NO STANDING IN COURT TO COMPLAIN OF THE STATUTORY REGULATION REQUIRING INSURANCE COMPANIES TO MAKE INSURANCE CONTRACTS THROUGH REGULARLY CONSTITUTED VIRGINIA RESIDENT AGENTS, HAVE THEM COUNTERSIGN THE POLICIES, AND PAY THEM THE USUAL PRODUCER'S COMMISSION 109

VII. THE STATUTORY CLASSIFICATION OF AGENTS AND EMPLOYEES OF STOCK EXCHANGE COMPANIES IN VIRGINIA IS NOT ARBITRARY OR CAPRICIOUS, BUT IS A REASONABLE ONE 112

Similar Statutes in Other States 114

Page

VIII. THIS CASE IS NOT CONTROLLED BY HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY V. HARRISON 123

The Georgia Statutes Involved 124

The Virginia Statute Distinguished 125

What the Virginia Stock Salaried Agent or Employee is Prohibited from Doing by the Virginia Statute 126

The Questions Involved in the Harrison Case 127

What the Harrison Case Decided 128

A. *Whether the statute is unduly discriminatory and therefore denies equal protection is a factual question* 130

B. *Factual conditions in Virginia and Georgia are not necessarily the same* 137

C. *The facts proved justify exempting mutual companies from the Virginia statute* 139

D. *The test of reasonableness, from the standpoint of denial of equal protection, is whether the statute is appropriately adapted to the existing practices of mutual and stock casualty companies, respectively* 144

E. *The appellants are not harmed because the State does not require mutual companies to compensate their agents on a commission basis* 146

F. *The bill of complaint does not raise the question of equal protection* 148

CONCLUSION OF PART I 152

PART II.

REPLY TO APPELLANT'S BRIEF

APPELLANT'S THEORY OF "QUESTIONS PRESENTED" 153

Page

APPELLANTS' STATEMENT OF "THE PURPOSE OF THE STATUTE" 154

APPELLANTS' STATEMENT OF "THE FACTS" 154

APPELLANTS' POINT I 168

CASES CITED BY APPELLANTS RELATING TO A STATE'S JURISDICTION TO TAX OR REGULATE 171

CASES CITED BY APPELLANTS RELATING TO THE INTERPRETATION OF CONTRACTS WHERE THERE IS A "CONFLICT OF LAWS" 174

APPELLANTS' POINT II 181

APPELLANTS' POINT III 182

REASONABLENESS OF EQUAL DIVISION OF COMMISSIONS BETWEEN VIRGINIA AGENT AND NONRESIDENT BROKER 182

APPELLANTS' POINT IV 188

CONCLUSION 188

APPENDIX 189

TABLE OF AUTHORITIES CITED

Statutes

	Page
28 U. S. C. A. §345, Judicial Code §238	2
28 U. S. C. A. §380, Judicial Code §266	2
Georgia Code (1935) §56-508	124, 125
Virginia Code (Michie 1936) §4180	59
Id., §4221-a	2, 86, 126
Id., §4222-c	74, 75, 77, 112
Id., §4223	59, 113
Id., §4226-a	86, 114
Id., §4231	59
Id., §4675(41)	74
Id., §4675(53)	74
Code of Virginia 1919, §4222	22, 26, 86, 106

Cases

Aetna Life Ins. Co. v. Dunken, 266 U. S. 389 175

Allgeyer v. State of Louisiana, 165 U. S. 578 ..... 54, 172

American Smelting & Refining Co. v. Stettenheim, 177 App. Div. 392, 164 N. Y. Supp. 253 167

Arizona v. California, 283 U. S. 423 163

Atlantic Refining Co. v. Virginia, 302 U. S. 22 107

Borden's Farm Products Co. v. Baldwin, 293 U. S. 194 ..... 134, 135, 156

Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251 ..... 135, 136, 137, 138, 144

Boseman v. Connecticut General Life Ins. Co., 301 U. S. 196 180

Bothwell v. Buckbee, 275 U. S. 274 ..... 23, 41, 48, 49, 50, 61, 63

Bradford Electric Company v. Clapper, 286 U. S. 145 ..... 64, 65

Page

Chastleton Corp. v. Sinclair, 264 U. S. 543 138

City of Richmond v. C. & P. Tel. Co., 127 Va. 612 69

Clark v. Paul Gray, 306 U. S. 583 ....132, 133, 134, 146, 159, 160

Compania General de Tabacos de Filipines v. Collector of Internal Revenue, 275 U. S. 87
51, 53, 54, 55, 56, 58, 171, 172, 179, 180, 181

Connecticut Gen. L. Ins. Co. v. Johnson 303 U. S. 77 ....67, 68

District of Columbia v. Brooke, 214 U. S. 138 69

Equitable Life Insurance Society v. Pennsylvania, 238 U. S. 143 52

Eubank v. Richmond, 226 U. S. 137 69

Fair, The v. Kohler, 228 U. S. 22 152

Fidelity and Deposit Company v. Tafoya, 270 U. S. 426 ..... 25, 172, 182

German Alliance Insurance Company v. Lewis, 233 U. S. 389 ..... 23, 69, 147, 148

Great A. & P. Tea Co. v. Grosjean, 301 U. S. 412 ..... 56, 57, 66, 67, 87, 180

Hanover Fire Ins. Co. v. Carr, 272 U. S. 494 ..... 59, 60

Hartford Accident & Indemnity Company v. Delta & Pine Land Co., 292 U. S. 143 ..... 175, 176, 177

Hartford, etc. Co. v. Harrison, 301 U. S. 459 (reversing Harrison v. Hartford, etc. Co., 183 Ga. 1, 187, S. E. 648) 123, 125, 127, 128, 129, 130, 131, 137, 138, 141, 143, 145, 147, 151, 152

Home Ins. Co. v. Dick, 281 U. S. 397 ..... 40, 61, 179, 180

Hooper v. California, 155 U. S. 648 23

La Tourette v. McMaster, 248 U. S. 465 ....24, 103, 104, 108, 109

Liggett v. Lee, 288 U. S. 517 36

McCray v. United States, 195 U. S. 27 163

Mutual Loan Co. v. Martell, 222 U. S. 225 70

National Union F. Ins. Co. v. Wanberg, 260 U. S. 71 ..... 23, 24, 107

New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495 23

Page

New York Life Ins. Co. v. Head, 234 U. S. 149 175

O'Gorman and Young v. Hartford F. Ins. Co., 282 U. S. 251 ..... 24, 71, 72, 88

Pacific States Box and Basket Co. v. White, 296 U. S. 176 ..... 158, 159, 163

Palmetto F. Ins. Co. v. Conn, 272 U. S. 295 45

Paul v. Virginia, 8 Wall. 168 23

Pennsylvania Lumbermen's Mutual F. Ins. Co. v. Meyer, 197 U. S. 407 52

Railway Express Agency v. Virginia, 282 U. S. 440 108

St. Louis Cotton Compress v. State of Arkansas, 260 U. S. 346 ..... 54, 171, 172, 181

Schollenberger, Ex parte, 96 U. S. 369 108

Stephenson v. Binford, 287 U. S. 251 105

Supreme Council Royal Arcanum v. Behrend, 247 U. S. 394 148

United States v. Rock Royal Cooperative 307 U. S. 533 148

West Coast Hotel Company v. Parrish, 300 U. S. 379 ..... 88, 89, 185, 186, 187

Secondary Authorities

11 Am. Jur., Constitutional Law, §261 69

Am. Law. Inst. Restatement, Conflict of Laws, §360 63

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., *Appellants*

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL., *Appellees*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR THE APPELLEES

PRELIMINARY STATEMENT

While this suit technically is prosecuted by thirty-four surety and casualty companies and the branch managers of three of them against the Virginia authorities charged with the duties relating to the enforcement of the insurance laws of the State, the real question presented involves the jurisdiction of Virginia to exercise her police powers to regulate rates and other matters in connection with Virginia coverage insurance contracts negotiated and made outside of Virginia, principally in New York City.

It is believed that the facts established by the evidence and the application thereto of the appropriate principles of law can be more clearly and satisfactorily discussed by dividing this brief into two sections or parts, the first part to be directed principally to a development of the facts and legal principles relied on to establish the State's jurisdiction and the reasonableness of the statutory regulations, and the second part to be in the nature of a reply to the brief filed by the appellants. The appellees will accordingly adopt this plan.

PART I.

FACTS AND LEGAL PRINCIPLES RELIED ON BY APPELLEES

OPINION BELOW

The opinion of the court below, pursuant to which the decree appealed from was entered, is reported in 29 Fed. Supp. 71.

GROUNDS OF JURISDICTION

The appellants challenge the validity of certain Virginia statutes as in violation of due process of law, and, in addition thereto, the branch manager appellants claim they are deprived of the equal protection of the laws because discriminated against in favor of salaried agents of mutual insurance companies. The appeal is pursuant to sections ~~228~~ 238 and 266 of the Judicial Code.

STATEMENT OF THE CASE

Section 4221-a of the Virginia Code divides the producing agents and employees of stock fire, surety and casualty insurance companies into two main classes, first, those who work on a regular salary, and, second, those who are compensated exclusively by commissions. The former is designated as either a "State Agent," "Special

Agent," or a "company representative." The same form of license is issued to each of them. The appellant branch managers come within this class. The commission agent is designated a "Resident Agent" and is so licensed. The classification is based upon the well established customs, usages, and practices of such stock insurance companies, their agents and employees. A full statement of the respective duties and functions of these agents and salaried representatives is contained in paragraph 17 of appellees' answer (R. 34-37). The chief distinction between the functions of the "Resident Agent," generally known in the business as a "producer," and the salaried representatives of the companies is that the commission or resident agent contacts the public and the policy-holders are regarded as his customers or clients (Op. R. 43), not those of the company, while the salaried representatives secure new resident agents, instruct and encourage them in their work, collect premiums due from resident agents, and generally represent the company in dealing with resident agents. Briefly stated, the business of the salaried representative is to contact the resident or producing agent, that of the agent to contact the prospective insured in producing business, and the assured in servicing the contract after same has been procured (Op. R. 46-7). "Whenever a branch manager negotiates a policy directly with an assured, the rule of the National Association of Insurance Agents, in which most insurers have acquiesced, requires that the contract be closed through one of the manager's commission agents who is paid the full producer's commission. The Manager's function is to develop his territory through ordinary producing agents and to supervise and assist them in the production of desirable business" (*Id.*).

In conformity with this custom, the Virginia statutes provide that all contracts of these types of insurance shall be made through the commission or resident agent, and that he shall countersign the contract and be paid full commissions. As to business produced in Virginia, the requirement of the statute conforms to existing customs (Op. R. 54), and this is true also as to fire insurance contracts produced outside the State, except that it has been customary for the resident agent to receive only half of the commissions where the contract was negotiated by a producer outside the State (Op. R. 61-2). In recognition of this custom in the fire insurance business, the Virginia statute permits the nonresident licensed broker who negotiates the contract to be paid half of the commission in casualty and surety contracts. (See appendix for quotation of the pertinent statutory provisions.)

The effect of the statutory provisions complained of is to require the casualty and surety companies to conform to the usages and customs of the fire insurance business; that is, to require that a Virginia resident commission agent be associated with a nonresident Virginia licensed broker in all Virginia coverage casualty and surety contracts produced by such a broker outside of the State. The fire insurance companies also come within the provisions of the statutes, but, since no substantial change is made in their customary business methods, they have made no complaint. But the casualty and surety companies, as to business produced outside the State, have never insisted on a Virginia resident agent being associated with the servicing of such contracts, and the brokers in New York, where most of such business originates, have stubbornly resisted any such practice.

Customs and Practices with Respect to Virginia Contracts Produced in New York

As stated in the opinion of the court below:

> "Brokers are rarely found except in large cities. In New York they produce virtually all the contracts, for the demand for insurance is so concentrated and has assumed such tremendous proportions that insurance is bought rather than sold. The producer represents the buyer, and remains free of company affiliation in order to use the assured's concentrated bargaining power to its best advantage when dealing with the various companies" (R. 46).

Three New York City brokers testified as witnesses for the appellant insurance companies. They seem to regard the insurance business as being patterned after the New York Stock Exchange. Thus the witness Thomas, 75% of whose business covers in other states, says the broker "knows his markets pretty well, or he should know them," and that his "business is pretty well spread all over the *Street* among the larger companies" (R. 791). Otis said, "We know our markets pretty well" (R. 859), while Gessner, the third broker, testified that the assureds have one or two brokers "sound out the market" to ascertain the best and most attractive "price" obtainable (R. 923). "The party assured by a policy produced outside of Virginia is occasionally a natural person who keeps his records and manages his business outside the state, and has interests in Virginia and elsewhere. But ordinarily, the assured is a large national corporation, incorporated in any of the states, with its central office in New York, Chicago or some other great business center. One company plaintiff in-

sures a mercantile corporation against the risk of public liability arising from the operation of 258 stores scattered throughout Virginia. Nation wide manufacturers, distributors, financial institutes, contractors, dairy companies, public utilities and others purchase contracts outside of Virginia to cover exposures which they have in that state. These contracts are produced almost exclusively by brokers operating in large cities where the national corporations have their principal offices, and the great majority of this business is produced in New York City, which has become the center for the insurance business in this country. Many of these out-of-state producers are licensed by Virginia as non-resident brokers" (Op. R. 48-9).

The term "market" is a very appropriate one to apply to the purchase and sale of Virginia insurance in New York, because the insurance companies bid for contracts at the lowest price. Many of the large casualty and surety companies are affiliated with fire and other types of insurance companies, and these groups may bid a price on the entire coverage of of the national corporations, including fire, surety, casualty, inland marine and all other lines except life insurance (R. 804). A contract of this kind combines into one "price" all of the assured's risks in all the states in which the assured does business (R. 125-7). Contracts of this type the court below refers to as "hotchpotch" or "multi-coverage" contracts. There are from ten to twenty brokerage firms in New York who place over a million dollars of premium business a year with one insurance company (F. & C.), and in some instances greatly in excess of that amount (R. 120). Some of the states of coverage regulate the premium rates for all or a part of the lines sought to be covered in those states while others do not.

Thus the insurance company may nominally appear to charge the rate fixed in Virginia for coverages here while completely nullifying the fixed premium rates for a particular line by adjusting the net price with component items in which the premium rate is not regulated and fixing these items at ridiculously low amounts (R. 916-918). A large national corporation usually permits several brokers to invite bids from the insurers on the same risk or combined risks, with the result that the tion operates to reduce the insurer's bid "price" (R. 805, 880). This competitive bidding for insurance often becomes so keen that the broker will consent to a reduction in his customary commissions, and this reduction operates to reduce the insurer's bid "price" (R. 805, 880-1). The insurer seeks to justify this by the argument that the acquisition cost factor in the premium rate is being reduced. The obvious effect of the practice, however, is a rebate by the broker to the assured of a part of his commissions, a practice which is forbidden by the statutes of Virginia and many states.

For many years the states have sought, by legislation, to regulate insurance rates and to prevent rebating and other discriminatory practices in the insurance business, and such legislation has been invariably encouraged and sustained by the decisions of this Court. In fact the propriety, fairness, wisdom and salutary effect of such regulatory legislation has rarely, if ever, been questioned in recent years. Yet the clear and obvious effect of the practices followed by insurance brokers has been to completely wipe out and nullify these regulatory statutes. By scrambling several hundred risks, each of which should be the subject of a separate contract, into one hotchpotch the insurer brings forth a "price" which he bids against another insurer (R. 805, 880, 917-8, Op. R. 52-3).

The necessary result of this practice is to completely eliminate Virginia's insurance rate regulations. The broker Thomas testified, "We don't deal so much in rates as what the ultimate net cost is going to be" (R. 805). The insurers use the term "equity rating" with respect to lines where no rate is fixed by law. In a hotchpotch contract the amount charged for a risk of this kind is purely arbitrary and when the term "equity rating" is used it really means there is no rate and the company fixes the cost to suit itself (R. 917-918). The broker Gessner testified with respect to hotchpotch contracts that "in practically all cases they are subject to either experience or equity rating, some form of special rating other than manual rates."

It cannot be denied that this reduced price for these hotchpotch contracts operates as a discrimination against other policy holders in Virginia and in the other states, and is clearly in violation of the spirit of the Virginia statutory prohibition against rebates. It also has the effect of discriminating against the local Virginia agent who may not rebate any part of his commission, as well as against Virginia and other fire insurance companies who do not have casualty and surety company affiliates. Any chance the Virginia agent might otherwise have of negotiating a contract with such an assured for local Virginia coverage, is completely eliminated by this practice, as also is any chance of such a fire company to secure the fire insurance business alone, or a casualty company to secure the casualty business alone.

An effort is made by appellants' witness Nicholls and by appellant Adair to justify the existence of these brokers by reason of alleged extraordinary services the "Broker's" *engineering* organizations are able to render.

Their testimony, fairly interpreted, however, shows that these so-called services are merely gestures and that the insurance companies themselves maintain like organizations in Virginia and in the various states of coverage, which are more advantageously situated to render engineering service, and which actually do render all such engineering service as can be really helpful in connection with such contracts. (Nicholls R. 147, Adair R. 240-1, Murphy R. 713.) In fact the witness Nichols inadvertently let the cat out of the bag when he said (R. 118):

> "The successful broker today gives such services that will *make the assured believe that he is actually earning his commission.*"

This witness knew of only one case where any broker had rendered any so-called "service" in Virginia (R. 148). The Richmond Branch Manager Adair never heard of a case where the assured derived any benefit from this so-called "service" of a nonresident broker (R. 243-4).

It very clearly appears from three of plaintiffs' witnesses, who are New York brokers, (Thomas, Otis, Gessner) that they perform little, if any, of certain types of service which an agent on the scene of the risk usually renders. Only one of these brokers had any engineering service and this consisted of one man for the entire United States (R. 801). Their evidence clearly shows that their services are, as a matter of fact, restricted to those which can be rendered in New York, and do not extend to those types of service, which in the nature of things, a local impartial agent alone can render. The broker Gessner testified that a very small percentage of

brokers have an engineer and that is mostly in the fire insurance line (R. 927).

It is quite clear that the so-called broker is, in reality, a barnacle on the business; a parasite, boring in where he is not needed and rooting out the legitimate agent. By pitting the companies against one another in competition for his favors he has demoralized rate standards and eliminated the local Virginia agent from participation in the cream of what should properly be classified as Virginia business (R. 921). Not only that, but he has almost completely eliminated the producing agent in New York City. The laws of New York prohibit him from brokering *life* insurance contracts.

The detrimental effect of this practice upon the outside states where these national corporations carry on a local business is at once obvious. Their citizens conducting an insurance agency business are utterly helpless to compete with these foreign brokers and the benefit of this very lucrative business is lost to Virginia and the other outside states. Virginia is thus deprived of taxing what would be legitimate incomes of her citizens which they are entitled to earn, and of sources of livelihood for them which would promote prosperity within her borders and alleviate her burdens of providing relief to the unemployed. It is obvious also that the reduced insurance costs and rebates granted the national corporations, such as chain stores, give them an unfair advantage over the local merchant and other businesses with which the national corporations compete in Virginia.

Furthermore, the State of coverage expends funds to provide fire protection to minimize losses under fire insurance policies; provides safe highways and traffic officers

in reducing liabilities from motor vehicle liability policies; inspects and regulates the operation of machinery in plants where employees are covered by workmen's compensation insurance; and provides police protection and courts in preventing defalcations under surety bonds. As an aid in carrying this burden the State is by this statute requiring the association of a local resident agent in connection with all such insurance contracts and is invoking the active help and cooperation of such local agent to render the assistance customarily given by them in domestic business to prevent the happening of the events resulting in the losses insured against (R. 381-2).

Then, again, this legislation establishes a policy that every *assured* shall have the benefit of the services of a local resident agent, impartial as between the insurer and the assured, in all cases of Virginia coverage. Such an agent should carefully examine the policy or contract before issuance to determine whether it fairly and justly conforms to the needs of the assured, and is required to countersign the policy or contract as evidence that he has performed this service for the assured (R. 358, 367, 374-6). He should keep an eye upon the subject of the insurance and the progress of events relating thereto during the time it is in force, advising both the assured and the insurer from time to time as to any matters needing attention. (See testimony of appellants' witnesses DeJarnette, R. 269-274; Boswell, R. 302; Clark, R. 330-336; Tabb, R. 356-361, 366-9. See also appellees' Exhibit "A", R. 279-280.) Obviously the Virginia agent will not, and cannot be expected to, render this service unless he is adequately compensated. The only means of accomplishing this purpose as to such contracts and policies issued at the request of these New York and

other out of state brokers is to require the association with such a broker *on a compensatory basis* of an impartial resident Virginia agent in connection with both the issuing and servicing of every such contract or policy.

In 1921 Virginia legislation, as stated in the opinion below, "was interpreted by the State Insurance Commissioner to require that all insurance on persons or property within Virginia should be issued under a policy separate from insurance on persons or property in any other state; that if the Virginia risk should be covered under a general cover contract form, it should include only Virginia property; that the rates should be those applicable to risks covered as published by the Rating Bureau of which the insurer was a member; and that the policy should be issued through and signed by a resident agent who should receive the usual commission, but this last provision did not apply to company employees who received a fixed salary."

"Prior to the Act of 1938, the resident agent who countersigned a policy produced outside the state performed no useful function in the production, underwriting or servicing of the contract. The appellants' brief states: 'Companies have never observed the mandate of the statute not to make contracts (outside of Virginia) except through licensed Virginia agents. * * * When, because of the compulsion of the law of a state of coverage, the company must secure the countersignature of a licensed agent there, he may countersign only a "law rider" or a "countersigning endorsement." He may sign one of a number of "underlying contracts" retained by the company, while a "master contract" is delivered to the assured.' Customarily, contracts produced outside of Virginia have been countersigned by the general

agents and branch office managers without compensation. They have not performed any of the services habitually offered the assured by a resident producer; but these services have been rendered by the nonresident producer and by the companies' salaried employees, such as engineers and adjusters, particularly the latter, when the matter has been one that could not be handled by a producer remote from the locality of the coverage. Prior to the Act of 1936, the Virginia resident agent statute requirements have had no real effect on the production of the contracts" (Op. R. 53-4).

The purposes, therefore, which the challenged statutes are designed to accomplish may be briefly stated as follows:

FIRST: To adjust the above mentioned competitive inequalities between the Virginia resident agents and the New York and other large city brokers and agents with respect to commissions on Virginia coverage insurance contracts and policies now being negotiated by such nonresidents (Op. R. 51).

SECOND: To adjust the similar competitive inequalities between Virginia insurance companies none of which have group affiliates, and those which are members of such groups, now existing in favor of the latter, enabling them to combine in one hotchpotch contract the several types of risks insured against by all companies in the group (Op. R. 51).

THIRD: To adjust similar competitive inequalities between Virginia merchants and other businesses and chain stores and other national corporations (Op. R. 51).

FOURTH: To secure the services of Virginia resident agents (a) for the benefit of all holders of contracts and policies issued by such companies in the exercise of their Virginia privileges and franchises, and (b) for the benefit of the State as an aid in providing efficient and economical fire, motor patrol, police protection and other functions of government incidental to the matters covered by such contracts and policies (Op. R. 60-61).

FIFTH: To assist in bringing within the regulatory control of the State as to rates, taxes and other matters insurance contracts negotiated or made outside the State (Op. R. 52-3, 61).

The *means* by which the statute undertakes to accomplish these purposes are the requirements (a) that every such contract and policy shall be countersigned by an impartial commissioned Virginia agent, and (b) that such agent shall be compensated to the extent of at least one-half the producer's commission customarily paid to him where he alone negotiates a similar contract and thereafter services same.

The reasonableness of these statutory provisions, as well as the State's jurisdiction to enact same, depend, of course, upon their application to the well established customs and practices of the surety and casualty insurance companies and their agents and employees, which will now be referred to.

ESTABLISHED CUSTOMS AND PRACTICES OF THE SURETY AND CASUALTY INSURANCE BUSINESS

This business may be divided into three main divisions: (a) the securing of contracts or policies of insurance, from the premium for which the company derives its principal income; this is usually called the production

division; (b) the performance on the part of the company of the obligations imposed on it by such contract or policy, embracing what are usually spoken of as the engineering and claims divisions; and (c) the investment of its capital, surplus, and reserves. With this investment feature we are not here concerned, so it may be eliminated from further consideration.

The Production Division includes the fixing of premium rates in so far as they are not controlled by law; underwriting, or passing on the desirability of risks; and the soliciting and negotiating of contracts of insurance.

The premium rate for any particular line of coverage is primarily based on the average loss experience in that line. As to any particular assured with any substantial volume of coverage in certain lines this average loss experience is adjusted to his individual experience history or record, and his premium rate is raised or lowered to conform thereto. Each premium rate contains as a component part thereof a factor called "acquisition costs" which embraces the commission or compensation paid, or to be paid, to the agent who negotiates and procures the insurance contract and renders the requisite service with respect to same throughout its duration (Op. R. 47).

All contracts of the appellant companies are written through commission agents, and they are compensated out of that part of the premium dedicated to that purpose as above pointed out. These agents furnish, operate and maintain their own offices at their own expense, and generally are agents for a number of insurance companies. The assureds with whom they negotiate insurance contracts are universally regarded as customers or clients of the agent and not of the insurance company. The agent therefore occupies a dual relationship. For some purposes he is the agent of the insurer while, at the

same time, he is agent of the assured for other purposes. To each he occupied a fiduciary relationship, and to properly perform *his* obligations to *each* he must act fairly and impartially to the end that the insurer and assured shall each fairly and impartially perform their duties and obligations to one another. In case of disagreement over loss adjustments or any other dispute he acts as an impartial mediator to see that justice is done to both (Op. R. 45-6).

The service of the agent to the assured begins with the negotiations. He studies the problems presented in the particular situation confronting the assured, considers what type of contract will best serve the desired end and what changes in conditions may be made to reduce the cost of the desired protection. Having determined these matters he next sees that the contract itself is in proper form, contains appropriate provisions to meet the assured's needs, and that same is properly classified for premium rates. Thereupon he countersigns the contract and delivers it to the assured.

But this by no means completes the service the agent is to render. He studies the loss experience of his client, the assured, and makes suggestions for changes in methods of operation so as to reduce losses, such as accidents under workmen's compensation or automobile liability insurance policies, or other suggestions appropriate to the particular line of coverage carried by the assured.

He sees to it that the engineering and inspection services which the insurer is either under obligation or is willing to provide from its service departments in the State are furnished and utilized to the best advantage, and that the assured receives the benefit of any

changes in the contract or policy provisions to which he becomes entitled from time to time as a result of such service, or as a result of amendments and modifications of applicable rules, regulations or laws. He appears before regulatory and rate making bodies to the end that his clients' risks shall be properly classified and other appropriate action taken with respect thereto. He prepares proofs of claim and, as before mentioned, acts as an impartial mediator between the assured and the company in cases of loss adjustments or other disputes. He is always available to the assured for consultation and advice with respect to the interpretation of the contract, the assured's duties thereunder or any other matters relating to the coverage.

This commission agent, who in Virginia negotiates the insurance, and thereafter performs the various duties above described, from the standpoint of the insurance company is a producer of premiums and the company applies to him the term "Producer." The Virginia statutes designate him a "Resident Agent," and require that all contracts, wherever made, which have the situs of the risk in Virginia, and which insure against loss from risk or events which, if they occur at all, will occur in Virginia (except traveling risks) shall be made "through" this commission "Resident Agent." This word "through" is interpreted by the Virginia law enforcing authorities (the appellees), as meaning that whenever such a Virginia coverage contract is made in New York, or any other place, the company shall associate a Virginia "Resident Agent" with the nonresident broker or agent who negotiates the contract with the assured. The statute further provides that this Virginia "Resident Agent" "through" whom, as an associate,

the contract is made, shall receive at least fifty per cent of the commission which he could have received if he alone had negotiated and thereafter would service the same contract. The statute also requires that this "Resident Agent" shall countersign each such contract, regardless of where negotiated or made. "The important object of the statute is to require that all policies shall be placed by a resident agent, who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract. Of this main purpose the requirement of countersignature by the resident agent is only a minor and incidental part of little importance except as indicating that the resident agent shall become an active factor in the business, especially when coupled with the major requirement that he shall be entitled to the whole commission of which he must retain one-half. The latter requirement, it is reasonable to conclude, will probably lead to greater participation on the part of the resident agent and he will be expected to render to the company and to the assured all the services of which he is capable. The tendency will be to create a more efficient agency force with the result that the local interests of the insured will be better served" (Op. R. 60-61).

Of course, the gravamen of the complaint in this suit is the requirement of the statute that a Virginia "Resident Agent" must be associated, on a compensatory basis, with the New York or other nonresident broker or agent who may negotiate the contract outside of this state.

The natural persons appellant in this suit, Osborne, McNeil and Adair, designate themselves as "Agents plaintiff" in the complaint. The application of the term

"Agents" to these three appellants is somewhat confusing. As a matter of fact, while it is true that from a legal standpoint these three appellants are "legal agents" of their companies, just as the president and every other officer of such company is a "legal agent," it is no more in conformity with insurance practices to refer to said persons appellant as "Insurance Agents" than it would be to refer to the President of the Company as an "Insurance Agent." The truth of the matter is that these persons appellant are "Branch Managers" or heads of branch offices set up, established and operated solely at the companies' expense, by the companies by whom they are employed. These officers are, to all intents and purposes, miniature *home offices*, and the "Branch Managers" are employed on a salary basis to operate and manage them. They never have received any commissions, and have never been permitted by their companies to receive any. Whenever in past years, as appears to have occasionally happened, they have negotiated an insurance contract directly with an assured, and they have invariably closed the contract through one of their "Resident Agents" and paid him the full commission he would have received had he himself negotiated it (Op. R. 47). But it is not the duty or function of these branch managers to negotiate with the assured. Their duties are to assist and supervise existing "Resident Agents" and to establish new "Resident Agencies." Generally speaking, the only negotiating the "Branch Manager" does directly with the assured is when he is requested by the "Resident Agent" to assist him in securing the business. The "Branch Manager" deals with the "Resident Agent," the "Resident Agent" deals with the assured. The "Branch Man-

ager" represents the company in dealing with the "Resi
dent Agent," while the latter, as above set out, is the im
partial representative both of the assured and of th
company, and sees that the assured's interests are fairl
protected.

While the insurance contracts (which the state'
power to regulate is here challenged) are made outsid
the state, they invariably contemplate the exercise of th
insurance company's Virginia license privilege in thei
performance. Most of these contracts are made upo
the understanding, express or implied, that they will b
continually serviced by the insurer's engineers and in
spectors in Virginia. All of them contemplate that in cas
of loss, the company's Virginia claim adjusters will ren
der service in settling claims (Op. R. 49, 51, 60).

Frequently the company's license privilege is exercise
even before the contract is made, as in cases where th
company requires its Virginia inspectors to examine an
report upon conditions pertaining to the risk befor
making its decision to accept or reject the same (R
601). This exercise of the franchise from the State t
transact an insurance business in Virginia, whether suc
exercise be actual or potential in specific instances, con
fers upon the State the jurisdiction to regulate the entir
transaction from its inception as will appear from th
decisions of this Court hereinafter referred to.

The legislation here challenged has the effect o
bringing to some extent within the control of Virginia
a business transaction which is but incidental to th
operation of a local branch industrial plant or store o
other local unit of a large national corporation. Th
local unit of the parent operation is, in reality, local bus

ness. It is universally recognized that one of the chief causes of our present economic and industrial dislocation has been the centralization of control of the nation's business in New York. The witness Nicholls, one of the appellants' New York branch managers, testified that this tendency of centralized control is increasing in the insurance business (R. 123-4, 149-150), while the appellant Adair, the Richmond insurance branch manager of the same insurance company, testified that nearly all of the large industrial plants being established in the Valley of Virginia are controlled in New York (R. 233). The practices prevailing there in the insurance business, as disclosed by the testimony in this case, present a typical illustration of how that city's centralized control acts as a huge vacuum, sucking in tribute and toll from the state where the real industrial activities take place. At page 351 of the record appears a public statement made January 7, 1939, by Hon. William O. Douglas, now an associate justice of this Court. The associated press account of the statement is as follows:

> "Chairman William O. Douglas of the Securities and Exchange Commission yesterday said, in an interview, the South would have a large regional stock exchange of its own if S. E. C. succeeds in decentralizing the nation's financial structure.
>
> "He said a main objective of S. E. C. was to take financial control from New York and Chicago in order that control of local business may be brought home 'where it belongs'."

This is but one of many statements emanating from economists, business leaders and lawyers of the highest standing deploring the harmful and destructive effect of

the centralization of business in New York. Statutes of the type here challenged are designed to remedy this evil, and may be very instrumental in accomplishing this beneficial purpose. While this statute regulates only one of the many problems relating to out of state contracts, it does present a test case of the jurisdiction and power of the several states to regulate the rest of them. If the state is without power to enact the regulation here challenged, then it is powerless to prevent the destruction of its rate regulating powers by forbidding hotchpotch contracts covering Virginia risks, or to remedy rebating by agents or brokers and the consequent unfair competition between such agents and brokers, or to remedy any of the other evils which may now exist or may grow up with respect to these insurance contracts.

ARGUMENT

The complaint in this case raises certain constitutional questions with respect to the following statutory provisions:

A. The requirement of section 4222 of the Virginia Code that casualty, surety and fire insurance companies, licensed to do business in the State, shall make all contracts of insurance or surety *covering risks in Virginia* "through regularly constituted and registered resident agents" regardless of whether the insurance is completely negotiated outside the State solely through nonresident agents or brokers.

B. The provision that such a contract so negotiated shall be countersigned by such a Virginia resident agent and that he shall receive and retain one-half of the pro-

ducer's commission customarily paid to him when he himself negotiates a similar contract.

Before discussing the disputed questions of constitutional law involved, it will be helpful to refresh the memory of the Court by calling attention to a few undisputed underlying basic principles, which have been well established, but which necessarily relate to and are interwoven and connected with the controverted questions to be considered. These may be stated as follows:

(1) *Contracts of insurance are not commerce at all, and when made between citizens of different states are not interstate commerce and are not affected by the commerce clause of the Federal Constitution.*

Paul v. *Virginia*, 8 Wall. 168, 19 L. ed. 357;
New York Life Ins. Co. v. *Deer Lodge County*, 231 U. S. 495, 58 L. ed. 332, and the many cases therein reviewed;
National Ins. Co. v. *Wanberg*, 260 U. S. 71, 67 L. ed. 136;
Bothwell v. *Buckbee*, 275 U. S. 274, 72 L. ed. 277.

(2) *The insurance business is clothed with a public interest and, in all of its phases, is subject to the regulatory police power of the State.*

German Alliance Insurance Company v. *Lewis*, 233 U. S. 389, 58 L. ed. 1011;
Hooper v. *California*, 155 U. S. 648, 39 L. ed. 297;
National Ins. Co. v. *Wanberg, supra.*

In this case Mr. Chief Justice Taft said:

"The decision of this court in *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389, * * *, settled the right of a state legislature to regulate the conduct by corporations, domestic and foreign, of insurance as a business affected with a public interest. This includes provision for 'unearned premium fund or reserve; then came the limitation of dividends, the publishing of accounts, valued policies, standards of policies, prescribing investment, requiring deposits in money or bonds, confining the business to corporations, * * * limitation of risks, and other regulations, equally restrictive.' 233 U. S. 412. It includes, moreover, the retrictions of defense to recovery on policies, and the forbidding of stipulations to evade such restrictions" (260 U. S. 71, 73, 74, 67 L. ed. 136, 138).

(3) *As an incident to the exercise of the police power to regulate the insurance business, the State may likewise regulate the business of insurance agents, their powers, duties, functions, compensation, and relations to the insurance companies.*

La Tourette v. *McMaster*, 248 U. S. 465, 63 L. ed. 362, involved the validity of a state statute restricting the granting of an insurance broker's license to residents of the state who had been licensed insurance agents of the state at least two years. In sustaining the statute, the court reiterated the doctrine that the insurance business "is subject to the regulating powers of the state" and said that "it necessarily follows that, as insurance is affected with a public interest, those engaged in it, or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged—is an instrument of such consummation."

In the case of *O'Gorman and Young* v. *Hartford Fire Ins. Co.*, (1930) 282 U. S. 251, 75 L. ed. 324, a New

Jersey statute limited the amount of commissions the insurance companies were permitted to pay fire insurance agents to a "reasonable amount" and required the rates of such commissions to be uniform as to all agents. The statute was challenged as arbitrary and unreasonable, but the court said the statute "deals with a subject clearly within the scope of the police power" and sustained its validity.

(4) *Virginia is without jurisdiction to prohibit an insurance company licensed therein from paying to persons in other states compensation for their services rendered outside of Virginia in negotiating insurance contracts, even though the risk covered relates to persons or property resident in or located in Virginia.*

Fidelity and Deposit Company v. *Tafoya*, 270 U. S. 426.

Virginia's Official Interpretation of the Statutes Involved

It is clear that the Virginia statutes here challenged do not undertake to prohibit or in any manner regulate the compensation or commissions the insurance company may pay to nonresident agents or brokers for services rendered outside of Virginia in negotiating a Virginia coverage contract and that appellants' contention to the contrary is without merit (Appellees' Answer, par. 16-g, R. 33, Moore R. 523-4). Repeatedly in their brief they make the statement that the statute forbids them to make Virginia coverage contracts in other states. But the only act incidental to the making which the statute requires is the countersigning by a resident Virginia agent. This act does not constitute the "making" of

the contract, although it does satisfy the statutory requirement that it be made "through" such agent. The statute is so construed by the appellees, who are the insurance law enforcement officers of Virginia. "Contracts are made 'through regularly constituted and registered agents or agencies of such companies' as required in Code section 4222 when such contracts are countersigned by a 'Resident Agent' as required by said section, even though he does not negotiate the contracts or deliver same or collect the premiums" (Appellees' Answer, par. 16-a, R. 32; Moore R. 524). A contract of insurance is usually considered "made" when the policy is *delivered*. The appellants occupy the position of seeking to enjoin the appellees from punishing them for making these contracts outside the State, although the appellees state on the record that they not only do not intend to do any such thing, but that they construe the statute as permitting the contracts to be so made. Appellees' construction of the statutes is fully set out in par. 16 of the answer (R. 32-3), and proven by the testimony of the Chief Examiner of the Bureau of Insurance (R. 525-8).

Constitutional Questions Involved

The appellants challenge the validity of the Virginia statutes upon two grounds: (1) That the legislation is an attempt by the state to extend its regulatory jurisdiction beyond her borders, and over matters beyond her jurisdiction to regulate; and (2) That even if the challenged regulations are within the jurisdiction of the state, same are arbitrary and capricious, and therefore deny due process to all appellants, and also equal protection to the branch manager appellants.

In reply to these contentions the appellees will undertake to maintain the following propositions:

Summary of Argument

I. The statutory provisions here challenged, (as applied to Virginia coverage contracts negotiated outside of the State), do not constitute an attempt by Virginia to extend her regulatory jurisdiction beyond her borders. The regulations are restricted to acts of the insurance company and its agents performed or to be performed within the State, pursuant to and as a consequence of the negotiation of the contract outside of the State.

II. The fact that a Virginia coverage insurance contract is negotiated and made outside the State does not impair Virginia's jurisdiction to regulate the insurance company's acts and transactions performed or to be performed within the State in connection with or pursuant to such contract.

A. All casualty and surety policies and contracts covering Virginia risks require or contemplate acts of performance in Virginia.

B. The making outside of Virginia of an insurance contract which contemplaes, requires, or permits the doing by the insurance company of acts in Virginia, constitutes, as a matter of law, an exercise of the insurance company's license right, or privilege, of doing an insurance business in Virginia.

C. The making outside of Virginia of a contract of insurance involving an exercise of a foreign insurance company's license right or privilege of doing business in Virginia, brings the contract within the jurisdiction and regulatory police power of Virginia.

III. Virginia may prohibit the doing in Virginia by an insurance company licensee of any act in connection with or in the performance of a Virginia coverage contract made by it outside the State in violation of Virginia laws, by the imposition of a fine or by revocation of said company's license to do business in the State.

IV. The fact that a Virginia coverage contract, made by an insurance company licensee in violation of Virginia laws is made outside the State does not impair the jurisdiction of Virginia to revoke the company's license to do business in the State because of making such contract in violation of her laws.

V. The objects and purposes sought to be attained by the challenged legislation are legitimate and proper, and the means employed to that end are not arbitrary or capricious but are reasonable and appropriately adapted thereto.

VI. The branch manager appellants have no standing in court to complain of the statutory regulation requiring insurance companies to make insurance contracts through regularly constituted Virginia resident agents, have them countersign the policies and pay them the usual producer's commission.

VII. The statutory classification of agents and employees of stock insurance companies in Virginia is not arbitrary or capricious, but is a reasonable one.

VIII. This case is not controlled by *Hartford Steam Boiler Inspection and Insurance Company* v. *Harrison.*

A. Whether the statute is unduly discriminatory and therefore denies equal protection is a factual question.

B. Factual conditions in Virginia and Georgia are not necessarily the same.

C. The facts proved justify exempting mutual companies from the Virginia statute.

D. The test of reasonableness, from the standpoint of denial of equal protection, is whether the statute is appropriately adapted to the existing practices of mutual and stock companies, respectively.

E. The appellants are not harmed because the statute does not require mutual companies to compensate their agents on a commission basis.

F. The bill of complaint does not raise the question of equal protection.

These points will be discussed in the order above set out.

I.

The Statutory Provisions Here Challenged, (as Applied to Virginia Coverage Contracts Negotiated Outside of the State), Do Not Constitute an Attempt by Virginia to Extend Her Regulatory Jurisdiction Beyond Her Border. The Regulations Are Restricted to Acts of the Insurance Company and Its Agents to be Performed Within the State, Pursuant to and as a Consequence of the Negotiation of the Contract Outside of the State.

This statute does not forbid the insurance company from negotiating Virginia coverage contracts outside of Virginia, nor does it forbid the company from employing agents or brokers to negotiate same, or from compensating them for their services whether they be licensed by Virginia as nonresident brokers or not. Its provisions, though negatively expressed, are positive in effect. The statute requires the company to make the insurance contract for a Virginia risk through a Virginia resident agent and associate him with the transaction. It requires that this agent shall countersign the policy and also, for his various services, be compensated to the extent of at least half of the customary so-called "producer's commission." The obvious purpose of this is to require certain things to be done in Virginia by the agent residing here in connection with insurance negotiated outside the State. As viewed by the Virginia enforcing authorities, as expressed in a resolution of the Virginia Association of Insurance Agents (Appellees' Exhibit A, hereinafter quoted), and as considered by the individual resident agents, the effect of the statute is to impose on the countersigning agent certain well defined duties (Op. R. 55-6). He should examine the proposed insurance contract to determine whether it is in proper form and whether the premium is correct. He

should also contact the assured, or his or its representative, if practicable, and examine the risk to ascertain whether the coverage or protection provided, as expressed in the contract or policy, conforms to the needs of the assured and whether there are matters of fact pertaining to the risk about which the assured or insurer should be advised before the contract is finally made. It is also considered the duty of the countersigning agent so compensated to render to the company and to the assured throughout the life of the contract the same varied and valuable services which he would customarily render were he alone the agent who negotiated the insurance (Op. R. 55). The testimony of some of *appellants' own witnesses* is convincing that the effect of the statute is to cause the Virginia agents to do certain things and render certain services in this State, both to the insurer and the assured, in connection with these contracts which are very useful and beneficial and in accord with a sound public policy. Prior to the passage of this statute the custom was for a countersigning agent, who was not associated with the contract on a compensatory basis, to countersign same as a matter of course, without even examining the contract, treating the act as a perfunctory one (R. 209, 238-9, 252-3). Of course, neither the assured nor the insurer derived any benefit from such a countersignature and the purpose of the statute in requiring it was completely nullified by the manner in which the act was done. But appellant Adair admitted that resident commission agents *may render* valuable services to nonresident assureds, and that assureds frequently request the association of a Virginia agent with a risk contracted for outside the State (R. 227-8, 280). He further testified that a resident agent

customarily renders valuable services to the assured throughout the life of the contract in cases where he negotiates same (R. 248-9). Nicholls, New York branch manager of the appellant Fidelity & Casualty Company, admitted that a resident countersigning agent may examine into the risk and render valuable services (R. 142-4, 149, 169). This witness further admitted that the Virginia agent customarily renders "incalculable" services throughout the life of the insurance contract he negotiates (R. 165).

Appellants' witness Izard, a resident commission agent of Roanoke, Virginia, who does a large business with nonresident brokers and is opposed to the statute, testified that, before the present statute was passed, the proportion of the commission he would receive in countersigning cases negotiated outside the state was dependent upon the amount of local service the nonresident broker desired him to render, being usually fifty per cent in fire insurance cases, and something less than thirty-five or forty per cent in casualty and surety lines, "it all depends upon the amount of work that you put into the servicing of the risk at the request of the broker" (R. 632).

Appellants' witness Yancy, a commission agent of Harrisonburg, who does a large business with nonresident brokers, and who is opposed to the statute, also testified to the same effect (R. 678-9). This witness stated that, in his opinion, there is no such difference in the service a resident agent customarily renders in connection with fire insurance contracts and that rendered in connection with casualty and surety contracts as would justify paying the resident agent a greater part of the commission in one line than in the other. He

testified that in some cases more service would be required to be rendered by a local producing agent in casualty insurance than in fire (R. 680).

The foregoing testimony of appellants' witnesses pointed out is by no means exhaustive of similar testimony of hostile witnesses. It is sufficient, however, to render it unnecessary to burden the court at this time with a discussion of the testimony of appellees' witnesses on the question of the nature and value of the services customarily rendered by agents local to the risk. There can be no doubt that the effect of the statute is to cause much work to be done *in Virginia* by these agents.

In view, however, of the effort of the appellants here to belittle the extent and value of the services of the commission agent, it is enlightening, and even refreshing, to read from the public statements of two of the insurance company's executives, or representatives, made under circumstances free from the bias and prejudice incident to this litigation. On May 9, 1938, Mr. Charles C. Hannah, Second Vice President of the Fireman's Fund Insurance Company (an affiliate of one of the appellants here) made an address at Atlantic City before the Insurance Conference Management Association. A press release of this speech contains the following:

> "While an agent is legally a representative of the company only, in fact and operation he acts, as well, as broker for the assured. He has come, through practice and custom, to occupy a dual position wherein he advises and represents company and assured with greater facility, dispatch, efficiency, and satisfaction to both than in a single relationship.
>
> * * * * *

"His relation to policyholders is advisory and his self-imposed duties and requirements can be listed in about this order:—

"1. Analysis of insurance needs and recommendation of covers.

"2. Determination of hazards and their possible effect in the way of loss and/or premium cost.

"3. Recommendation of improvement of risk.

"4. Reduction of insurance costs.

"5. Binding of insurance or extension of coverage by endorsement.

"6. Advice as to ways and means of financing premiums.

"7. Prompt attention to losses including suggestions as to procedure, particularly in advance of arrival of adjusters.

"8. Adjustment of small losses.

"In all of these he has immediately available for his use the facilities, experience and assistance of all the companies he represents, including their engineering, service, and adjusting departments, also the rating and inspection associations with which they are associated or affiliated.

"The agent can be and is of valuable assistance to brokers, with whom he works in close cooperation, in the development of the foregoing services, acting in that capacity on their behalf and, it must be said, in splendid loyalty to their interest and with a high regard for the ethics which call for absolute abstention from solicitation of any risk on which he has written the insurance for a broker.

"In his local community, the local agent voluntarily assumes even larger responsibilities in the interest of public welfare which in turn indirectly ben-

efit his customers and companies and in the exercise of which he renders invaluable service. In this capacity he is looked to for leadership and uses his influence and knowledge in the expansion of municipal protection, improvement of construction, removal of conflagration and catastrophe hazards, accident and loss prevention, more adequate policing, and better local regulations generally. The foregoing incompletely lists his opportunities for a real social service but is sufficient for illustration." (Italics supplied.)

Especially noteworthy is the fact that in the foregoing address the insurance executive emphasizes *the value of cooperative service rendered jointly by the broker and the commission agent.*

The other address referred to above was delivered by Mr. Ray Murphy, Assistant General Manager of the Association of Casualty and Surety Executives, an organization to promote the interests of the Casualty and Surety Companies (R. 823). All of the appellant companies are members of this Association (R. 824). This address was printed in pamphlet form by the Association for public distribution. The quotations therefrom copied in the record (R. 353-4) were contained in an editorial in "The Insurance Index" for January, 1939. Mr. M rphy, in this address, made the following public statement:

"Capital stock company insurance is true American insurance. The capital stock casualty and surety companies believe in the American competitive system of private enterprise and they practice it. They adhere to it, even in the face of unfair competition, because they know it gives positive protection at the lowest possible cost and, insurance being a thoroughly human business, they know that every policy that

is written must be supported by *continued service to the assured*, not merely at the time the sale is being made or when the day arrives for renewal, *but throughout the life of the policy, day in and day out.*

"*The only medium through which this service can be rendered consistently is the agent in the field.* He is less the representative of the company whose policies he places than he is the representative of the individual or company he insures. *The capital stock agent is not a salaried employee who must respond to the direction of any one company or group of companies.* He is a business man, doing business in his own local community. His first consideration must be his clients. *That means greater protection for the public than is possible in the case of the direct-writing mutual which operates through a salaried employee.*

"The services that the capital stock agent renders are many and varied. Insurance is a highly competitive business and the agent must be alert and active to survive. That, too, is in the public interest. *From time to time he must advise his clients about changes in policy forms and rates*, giving them full advantage of increased protection. He must be ready to see that his clients receive *full and swift settlement of claims*, and that all of the protective features of the insurance policy *are brought into prompt play* for the benefit of the assured. *All of these things are in the public interest.*" (Italics supplied.)

While the foregoing statements of representatives of the appellant companies are not evidence in this case, they do furnish an adequate basis for judicial notice. The opinions of this Court cite many similar sources of information as to general practices and customs, for instance, the opinion of Mr. Justice Brandeis (dissenting in part), in the case of *Liggett* v. *Lee*, 288 U. S. 541. The weight

to be attributed to information or knowledge of this kind with respect to customs and practices is very great when derived from statements made by two persons in high authority in the insurance business, one of whom is indirectly a representative of all the appellant companies, and the other of whom is a vice president of an affiliate of one of the said companies.

In the light of what these two outstanding insurance executives have publicly said, it is important to note how closely the reaction of the Virginia Association of Insurance Agents to this Virginia statute conforms to the views expressed by these executives as to what the duties and responsibilities of these Virginia commission agents should be under the compensatory provisions of the statute. Appellees' Exhibit A, on February 17, 1939, was mailed out to all members of the Association (R. 346). It is a bulletin, quoting a copy of a resolution adopted February 13, 1939, by the board of directors of said Association. The resolution is as follows:

> "WHEREAS, Under the 1938 Virginia law the Virginia resident agents are required to be associated with Virginia licensed non-resident brokers in connection with all fire, casualty and surety contracts insuring Virginia risks whether the same be negotiated exclusively by such non-residents or not; and
>
> "WHEREAS The Virginia resident agent is required by said law to be paid at least 50% of the usual commission for same; and
>
> "WHEREAS, Some question has arisen as to the functions and duties of the Virginia resident agent in such cases and this Board has been requested by numerous Virginia agents to define resident agents' duties and functions in such cases,

"NOW THEREFORE BE IT RESOLVED:

"(1) Whenever a Virginia resident agent is requested to countersign such a Virginia coverage contract he shall consider himself associated with the non-resident agent or broker who negotiated same. In all cases where a Virginia agent is associated in the writing of a Virginia policy or contract by a fire, casualty or surety insurance company or a non-resident Virginia licensed broker, the Virginia agent shall, before countersigning the policy or contract, contact the assured or his Virginia representative, if practicable, and familiarize himself with all pertinent facts relating to the policy or contract. Thereupon he shall carefully examine the policy or contract to ascertain whether same is in proper form, correct as to rates and coverage and is best adapted to the proper needs and requirements of the assured. He shall make such suggestions as to any changes therein, as he may deem advisable.

"(2) Throughout the life of any such contract the Virginia resident agent shall be under the same obligations to the assured with respect to servicing the contract as he would be if he alone had negotiated it. Where a Virginia resident agent is associated with the writing of such contract by a Virginia licensed non-resident broker, he shall respect the ownership of the expiration by such non-resident broker as is incorporated in the principles of the American Agency System and when requested by such non-resident broker render his assistance to secure the renewal or continuance of the contract" (R. 279-280).

The foregoing shows, in a general way, what the statute contemplates will be done in Virginia by the resident agents. This will be discussed in more detail later in this brief under Point V.

In addition to what the statute may be said to contemplate that the *agents* will do in Virginia, it also requires the *insurance companies* to do certain things in this State. The company must make every contract negotiated "through" a licensed resident agent; that is, it must associate a resident agent in the transaction. The company must have the contract countersigned by such resident agent and must pay him full commissions, with the proviso that the said agent may pay half of same to a non-resident Virginia licensed broker if said broker negotiated or assisted in the negotiation of the contract. These things the *company* is required to do, but all of them are required to be done *in Virginia*. The statute here challenged does not forbid the company from doing anything outside of the state.

It is clear, therefore, that while the contract may be negotiated *outside the state*, the regulatory provisions are restricted to what shall be done *within the state*, as a result of such outside negotiations. The statutes clearly undertake to regulate the servicing in Virginia of contracts covering risks domiciled there. They are strictly *servicing regulations*.

II.

The Fact that a Virginia Coverage Insurance Contract is Negotiated and Made Outside the State Does Not Impair Virginia's Jurisdiction to Regulate the Insurance Company's Acts and Transactions Performed or to be Performed Within the State in Connection With or Pursuant to Such Contract.

In the very nature of things there should be little doubt about the correctness of the proposition above stated. Insurance companies are as much subject to the regulatory police powers of the state as railroads, power companies, telegraph and telephone companies, or other public

service corporations. It would hardly be contended that a power company, such as the Virginia Electric Power Company, could make in New York a valid contract with the DuPont Company for electric power for that Company's plant near Richmond at rates which would be in violation of those lawfully prescribed by the Virginia State Corporation Commission, or a valid contract for light or power service which would in any manner violate the Commission's lawful regulations, or violate any state law. Nor could a similar contention be plausibly advanced with respect to such a contract for intrastate services of a railroad company, a telephone or telegraph company, a water or gas company, or any company the business of which is clothed with a public interest so as to bring it within the state's regulatory police power.

As said by Mr. Justice Brandeis in *Home Ins. Co.* v. *Dick*, 281 U. S. 407, "A state may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily it may *prohibit performance* within its borders, even of contracts validly made elsewhere, if they are required to be performed within the state and their performance would violate its laws." Thus, if an insurance contract is made in violation of Virginia laws relating to countersignature, payment of commissions or other valid regulations made pursuant to Virginia statutes, the performance of such contract in Virginia is prohibited by a fine or by revocation of the insurance company's license to do business in the State. In this connection subordinate proposition A will now be discussed.

A. All Casualty and Surety Policies and Contracts Covering Virginia Risks Require or Contemplate Acts of Performance in Virginia.

Copies of the standard contracts in use by appellant companies covering various casualty and surety risks have been filed as exhibits in this case. An examination of them discloses that they all contemplate or require acts of performance in the state which is the situs of the coverage. They will be taken up separately.

Appellants' Exhibit No. 4 (R. 178-184) is a copy of an "Automatic Schedule Fidelity Bond," which indemnifies an employer against loss from certain dishonest, fraudulent or criminal acts of the employee. An examination of same shows the following acts or events occurring in Virginia which would effect the terms of the contract or the performance thereof:

(a) The discontinuance of one or more employees, the addition of one or more employees in the same service, or the transfer of an employee from one of the named positions in the service to another. This liability as to new or transferred employees continues for two months after employment without notice to the company, and thereafter upon notice and acceptance thereof. These new employments and transfers occur in Virginia.

(b) The contract imposes on the assured an obligation to bring legal proceedings against the defrauding employee, or make adjustments and settlements of loss with the employee and receive payment. All such payments operate to reduce the liability of the assured. These acts occur in Virginia.

(c) If the domicile of the assured is in Virginia, the loss would be legally payable in Virginia since the contract does not specify any other place of payment (*Bothwell* v. *Buckbee*, 275 U. S. 278).

(d) Losses would be investigated or adjusted in Virginia.

Appellants' Exhibit No. 5 (R. 185-190), which is a plate glass policy indemnifying the assured against loss or damage by accidental breakage of the glass covered, including lettering and ornamentation, reveals the following acts or events which it is contemplated might or will occur in Virginia:

(a) The assured may notify an authorized Virginia agent of the insurer of a loss, which would be investigated in Virginia.

(b) The broken glass becomes the property of the company, and its agents will take possession of and dispose of same.

(c) The insurer is given the option to pay the loss in money or to replace the glass, lettering and ornamentation. The replacement would necessarily be done in Virginia.

(d) The insurer is given the right to inspect the premises and glass, and may suspend the risk or cancel same pursuant thereto. The inspection would be done in Virginia.

(e) The insurer is subrogated to the insured's rights and claims against any tort feasor for causing the damage. The enforcement of this right would be done in Virginia.

(f) If the insured is domiciled in Virginia, the place of payment of the loss is in Virginia.

Appellants' Exhibit No. 6 (R. 178, 191-196) is a copy of the standard auto liability fleet policy, indemnifying

the assured against liability for bodily injury or property damage resulting from the operation of the motor vehicles covered. It contemplates the following acts or performances on the part of the insurer in Virginia:

(a) The insurer obligates itself to defend all suits against the assured for damages resulting from the operation of the vehicles. Where the accident occurs in Virginia the suit would be in Virginia.

(b) The insurer is given the right to make such investigation of accidents and such settlement of claims against the assured as it sees fit. This would be done in Virginia.

(c) The insurer agrees to pay premiums on bonds to release attachments, and premiums on appeal bonds. These payments would be made in Virginia.

(d) The insurer agrees to pay on behalf of the insured all sums and discharge all liability insured against, for which the assured is legally liable. These payments would be made in Virginia.

(e) The insurer automatically becomes liable for losses sustained by reason of the operation of newly acquired motor vehicles, these being automatically added to the coverage, and the insurer automatically becomes liable for the payment of any additional premiums therefor. The acquisition of these new vehicles would occur in Virginia.

(f) The assured may notify any authorized Virginia agent of the insurer of accidents arising from the operation of the vehicles.

(g) Upon the death or bankruptcy of the assured, the policy automatically becomes transferred for a period of thirty days to the assured's legal successor. This transfer may occur in Virginia.

(h) The insurer is subrogated to all of the assured's rights of recovery against third persons. These rights would be enforced in Virginia.

(i) If the domicile of the assured is in Virginia, the insurer is obligated to pay the loss in Virginia.

Appellants' Exhibit No. 7 (R. 178, 197-200) is a copy of the standard accident policy. The evidence shows this policy is rarely issued to a person other than one domiciled in the state of the situs of the risk. It contemplates payment of the loss, which includes in some cases the payment of certain weekly indemnities. These payments would be made in Virginia usually. It is obvious that this contract contemplates an investigation of the facts in Virginia by the insurer pertaining to any claim for disability or accident to determine the *bona fides* of the claim and to escape the payment of fraudulent claims.

The appellants' Exhibit No. C (R. 494-505) is a copy of the standard workmen's compensation policy in use by The Travelers Insurance Company, and is substantially the same as those in use by other companies. This contract indemnifies the insured against liability to employees under the workmen's compensation law, and contemplates performance in Virginia by the following acts:

(a) The payment to the employee of any amount he becomes entitled to receive by reason of the workmen's compensation laws. Almost invariably the employee is

domiciled in Virginia and the payment to him would be made here.

(b) *The rendering of service to the employer or assured*: (1) by the inspection of the work places in Virginia covered by the policy; (2) by making suggestions to the assured as to changes or improvements to reduce the number or severity of injuries; (3) the investigation of and settlement of claims.

(c) Defending in the name of and on behalf of the assured, all suits or legal proceedings growing out of any such injuries, whether or not the suits be groundless, false, or fraudulent. These suits would be tried in Virginia.

(d) The payment of all costs taxed against the assured in any such suits and all expenses incurred by the insurer for investigation, negotiation or defense of such suits. These payments would be made in Virginia.

(e) The New York Branch Manager Nicholls (114 to 118) testified that it is customary to issue blanket workmen's compensation policies which become effective and protect the insured, without notice to the insurer, immediately upon the beginning of a new activity in any one of the United States. The mere beginning of the construction of a building by a contractor in Virginia would automatically operate to bring the assured within the protection of the contract. The legal effect of this is that the contract itself is made in Virginia (*Palmetto Ins. Co.* v. *Conn*, 272 U. S. 295, 77 L. ed. 243).

(f) The inspection by the insurer of the plants, works, machinery and appliances of the assured in Virginia.

(g) An examination by the insurer of the books of the insured so far as they relate to the remuneration earned by the employees in order to determine the amount of the premium or other relevant matters.

(h) The contract declares the obligation to be a direct one from the insurer to any injured employee, or, in the event of his death, to his dependents, and enforceable against the insurer by such employee or dependent without regard to any default of notice or payment of premiums on the part of the assured. This enforcement would occur in Virginia.

(i) The insurer is subrogated, as to all payments made to, or rights of recovery therefor vested by law in, the assured or any employee or dependent of such employee, against third persons, corporations, associations, or estates. This right of subrogation would be enforced in Virginia.

(j) There are other miscellaneous provisions in the policy, such as notices to agents which would occur in Virginia, but the foregoing are sufficient to demonstrate that a contract of this kind contemplates very many acts in Virginia on the part of the insurer.

It is unnecessary to go into further detail with respect to the various acts of performance or other acts which it is contemplated will take place in Virginia in connection with the obligations incurred by the insurer under the many types of contracts covering Virginia risks, but the foregoing are fairly illustrative of them all.

As to the services customarily performed in Virginia by the inspectors and engineers of the insurers, the testimony of the appellant Adair, who is the Richmond Branch Manager of the Fidelity and Casualty Company,

also one of the appellants, contains a concise and detailed statement with respect to the different types of service which it is customary for the appellant companies to render in connection with their policies and contracts (R. 240). This witness testified that no distinction is made as to services rendered by the inspectors, engineers and claim adjusters in connection with a policy or contract negotiated outside the State from those rendered where a similar contract is negotiated in Virginia (R. 243). He testified that in mechanical lines "A considerably larger load of the premium goes for inspection and engineering than for the payment of losses. It is really servicing insurance with a guarantee back of it that if our inspection and engineering services don't prevent the loss, we will pay for it" (R. 241).

The nature of the services rendered, as stated by this witness, is elaborated in greater detail by the appellants' witness Murphy (R. 713, *et seq.*), who is the chief of the engineering and inspection service of The Travelers Insurance Company in Virginia. In fact it is not disputed in the record that the investigation and engineering service customarily rendered by casualty and surety companies in Virginia, with respect to contracts negotiated outside of the State, is very extensive, and that all loss claims in connection with such contracts are customarily handled through the claim division or the claim adjuster of the insurance company in Virginia. In fact, appellants have taken the position that, by reason of the efficient, complete, and extensive services rendered by the insurer's inspectors, engineers, and claim adjusters in Virginia, in connection with such contracts, the necessity for the services of the local resident impartial agent is dispensed with.

B. The Making Outside of Virginia of an Insurance Contract Which Contemplates or Requires the Doing by the Insurance Company of Acts in Virginia, Constitutes, as a Matter of Law, an Exercise of the Insurance Company's License, Right, Franchise, or Privilege, of Doing an Insurance Business in Virginia.

We are not here concerned with the question whether acts of *negotiation* done outside of the State concerning the making of a Virginia coverage contract, whether successful or unsuccessful, would be so intimately connected with the exercise of the insurance company's state license privilege to be actually a part of same. The statute here challenged does not regulate such negotiations, and therefore the question is not involved. But it has been well established for many years that the *making* of such a contract is an exercise of such privilege.

The case of *Bothwell v. Buckbee, Mears Co.*, 275 U. S. 274, 72 L. ed. 277 directly decided this question. A mutual insurance company, not licensed in Minnesota, had made in Maryland a strike insurance contract to indemnify the assured against strike losses which would occur at the assured's plant in Minnesota. It does not appear that any strike occurred or that any losses were sustained, but suit was brought in Minnesota to compel the assured to pay the assessment made against it by the mutual company. The assured defended on the ground the insurance company, not being licensed to do business in Minnesota, should be denied the right to enforce same in its courts. The insurer's agents had solicited the contract in Minnesota, and this court held that this activity was doing business in the state in violation of its laws. But the court went further and held that it was also in violation of the laws of that state for an insurance company, unlicensed in Minnesota, to make in Maryland a contract which contemplated acts of per-

formance in Minnesota. In pointing out the various acts which the contract contemplated would be performed in Minnesota and which had the effect of violating its laws relating to the admission of foreign insurance companies to the state, Mr. Justice Brandeis said:

> "But the contract was also in its terms obnoxious to the Minnesota law. It required the company to perform, in Minnesota, acts which it was prohibited from doing there. The company agreed to defend, on behalf of the insured, any suits or other legal proceedings brought by striking employees against the insured to enforce claims arising out of any strike, and to pay any expenses incurred by the company in so doing. This covenant necessarily involved performance in Minnesota, as suits against the insured would be brought in that state, among other reasons, because it was a Minnesota corporation and had no place of business elsewhere. The company also covenanted to indemnify the insured for 'direct loss of average daily net profits and fixed charges,' due to strikes. The contract did not specify the place where payment for the loss should be made, so that under the common rule the insurer would be required to make the payment in Minnesota, the domicile of the insured. *Pennsylvania Lumbermen's Mut. F. Ins. Co.* v. *Meyer*, 197 U. S. 407, 416, 41 L. ed. 810, 815, 25 Sup. Ct. Rep. 483.
>
> "Besides these acts which the company bound itself to perform in Minnesota, the contract reserved to it the right to do, in Minnesota, and the company contemplated doing there, other acts forbidden by its laws, namely, the right to inspect the plant and the books of account and papers of the business; and the right to interrogate persons connected with it. Moreover, the contract clearly contemplates that not only these examinations, but the appraisals and other acts provided to be done by the company in the course

of the adjustment of losses, shall be done in Minnesota. All these things were activities of the insurance business which the company was prohibited by valid statutes from doing within the state. *Pennsylvania Lumbermen's Mut. F. Ins. Co.* v. *Meyer, supra*, pp. 414, 415. Compare *Commercial Mut. Acci. Co.* v. *Davis*, 213 U. S. 245, 256, 53 L. ed. 782, 787, 29 Sup. Ct. Rep. 445. Under rules of law generally applicable a state may refuse to enforce a contract which provides for doing within it an act prohibited by its laws. * * *" (275 U. S. at page 277; 72 L. ed. at page 280).

It follows that if the making of such a contract outside the state by a company *not licensed* in the state is *unlawful* because of the *want of a license*, and if the making of such a contract by a *licensed* company is *lawful* because of the *possession of a license*, then the making of the contract is necessarily an exercise of the franchise or privilege *granted by the license*. After detailing the various acts of performance which the insurance contract required to be done in Minnesota (which have been quoted above), the opinion continued:

"A contract of insurance, although made with a corporation having its office in a state other than that in which the insured resides and in which the interest insured is located, is not interstate commerce. *New York Life Ins. Co.* v. *Deer Lodge County*, 231 U. S. 495, 58 L. ed. 332, 34 Sup. Ct. Rep. 167; *National Union F. Ins. Co.* v. *Wanberg*, 260 U. S. 71, 75, 67 L. ed. 136, 138, 43 Sup. Ct. Rep. 32. Hence Minnesota had the power to prohibit the Employers' Mutual Company from doing business within the state without first complying with the prescribed conditions; and could refuse the aid of its courts in enforcing a contract which in-

volved violation of its laws. * * *" 72 L. ed. 277, 279).

About two weeks before the decision in the above case (*Bothwell* v. *Buckbee*) this Court had rendered its decision in the case of *Compania General de Tabacos de Filipines* v. *Collector of Internal Revenue,* 275 U. S. 87, 72 L. ed. 177. This case involved the validity of two separate taxes assessed by the Philippine Islands upon insurance premiums payable under two separate contracts of insurance. The taxing statute imposed the tax directly upon the assured, but the court, in deciding the question of its validity, treated it as, in effect, a tax upon the insurance company, saying, "We may properly assume that this tax, paid by the assured, must ultimately be paid by the insurer; and treating its real incidence as such, the question arises * * *." The court also held that the validity of the statute was to be determined by the application of the same principles of due process and equal protection as if the Philippine Islands were a state.

The tax on one of these contracts was held to be within the constitutional jurisdiction of the Philippines to impose, while the tax on the other contract was held beyond its jurisdiction. The distinction between the two insurance contracts is most illuminating upon the question of what constitutes the exercise by a foreign insurance company of its privilege of doing business in a state under its license. The assured was a foreign tobacco corporation licensed to do a local business in the Philippines. One of the insurance companies (referred to as the London Company) was also licensed, while the other (the Paris Company) was not. Both contracts were negotiated and made outside the Philippines. Losses were

payable in London and Paris, respectively. The court held that since the Paris Insurance Company was not licensed in the Philippines, the Islands had no jurisdiction over the transaction and therefore could not tax same. But as to the London Insurance Company's policy insuring against loss by fire of goods in the Philippine warehouses of the assured, the court said that the question presented was "whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively * * *."

Thus the court held that the sole fact that losses *might* arise which *might* contemplate adjustment and activities of the insurer's agents in the place of coverage was alone sufficient to require the conclusion that the making of the contract was an exercise or use of the right or privilege of the insurance company to do a local business under its license. While there are other cases which might be discussed, such as *Pennsylvania Lumbermen's Mutual F. Ins. Co.* v. *Meyer,* 197 U. S. 407, 41 L. ed. 810, and *Equitable Life Insurance Society* v. *Pennsylvania,* 238 U. S. 143, 59 L. ed. 1230, which is quoted from at length in the opinion below, it is not deemed necessary to thus burden the Court. The undisputed evidence in this case shows (see II-A *supra*) not only the necessity for, but the customary doing of many and various acts in Virginia by the insurance companies' engineers and inspectors in connection with these contracts made outside the State,

in addition to the activities of the claim adjusters in settling claims arising thereunder, referred to in the Philippine Tobacco case.

There can be no escape, therefore, from the conclusion that when one of the appellant companies makes a contract of surety or casualty insurance outside of Virginia but covering a risk, the situs of which is in Virginia, then the making of such contract contemplates, calls for, or permits acts of performance in Virginia, and involves an exercise or use of the company's right or privilege of doing business in Virginia under the license granted by the State.

C. The Making Outside of Virginia of a Contract of Insurance Involving an Exercise of a Foreign Insurance Company's License, Right or Privilege of Doing Business in Virginia, Brings the Contract Within the Jurisdiction and Regulatory Police Power of Virginia.

The above statement involves the ultimate or fundamental issue with respect to the question of jurisdiction to regulate. The appellants contend that even though the exercise of the Virginia license privilege in making an insurance contract confers jurisdiction to *tax* the contract, it does not follow that it likewise confers jurisdiction to *regulate* the carrying out or performance of the contract. This identical question came up in the *Compania Gen. Tabacos Case, supra,* which it has just been shown (B, *supra*), establishes the principle that the making of the contract is an exercise of the license privilege. As will be recalled, it involved the validity of a tax imposed by the Philippine Islands on the assured with respect to two insurance contracts made in Europe, one with a licensed insurance company and the other with an unlicensed one. The entire court was in accord that there was jurisdiction to tax the contract made with

the licensed insurance company because the contract was made in the exercise of said insurance company's license privilege. But Justice Holmes and Brandeis dissented from the court's decision that there was no jurisdiction to tax the assured with respect to the contract with the *unlicensed* insurance company. They thought the case should be distinguished from the *Allgeyer* (165 U. S. 578) and *St. Louis Cotton Compress* (260 U. S. 346) cases on the ground of "the difference between a penalty and a tax." But the majority of the court refused to recognize any distinction in so far as a state's jurisdiction is concerned, recognizing the principle that if a state has jurisdiction at all over a transaction, it has jurisdiction to regulate as well as to tax. Mr. Chief Justice Taft, in the court's opinion, pointed out that it was true that the fine and penalty in the *Allgeyer* and *St. Louis Compress* cases were intended as regulatory measures to discourage insuring in nonadmitted insurance companies, but the Chief Justice said, referring to the Philippine tax on the assured:

> "* * * And that is just what this tax is for. Even though it is only equal to the tax upon normal premiums paid in the Philippine Islands, it is imposed *for the purpose of discouraging insurance* in companies that do not pay tribute to the state because out of its taxing or penalizing jurisdiction. As the language above quoted from the opinion in the *St. Louis Cotton Compress Co. Case* shows, the action of Arkansas was invalid, *because of its attempt 'to regulate' the conduct of the Compress Company in respect to a matter not within its local jurisdiction. Taxation is regulation just as prohibition is.*" (Italics supplied. 72 L. ed. 177, 181.)

And the court also said in this connection:

> "* * * We are unable to see any sound distinction between the imposition of a so-called tax and the imposition of a fine in such a case. A so-called tax is just as much an interference with the liberty of contract as is a penalty by fine, where the subject matter giving rise to the imposition is beyond the jurisdiction of the state. * * *" (*Id.*)

But though the court held that the Philippines could not regulate by means of the tax the contract made in Europe between the assured and the *unlicensed insurance company,* it distinctly held that the Philippines *did possess the power to regulate by such a tax* the contract similarly made between the assured and *the licensed insurance company.* As to this contract the Chief Justice said:

> "We come now to the question of the tax upon the premiums paid to the London Company, which was licensed and presumably was doing business in the Philippine Islands. Does the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the imposition upon the assured of a tax of 1 per cent upon the money paid by it as a premium to the London Company? We may properly assume that this tax placed upon the assured must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license; because the policy covers fire risks on property within the Philippine Islands which may require adjustment

and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under *Equitable Life Assur. Soc.* v. *Pennsylvania*, 238 U. S. 143, 59 L. ed. 1239, 35 Sup. Ct. Rep. 829. The case is a close one, but in deference to the conclusion we reached in the latter case, we affirm the judgment of the court below in respect to the tax upon the premium paid to the London Company" (72 L. ed. 177, 182, 183).

This case clearly and unmistakably upholds the jurisdiction of the state, both to tax and to regulate the acts outside the state of a foreign corporation where such acts are done *in the exercise of the corporation's license privileges*. If the Tabacos Company's contract with the unlicensed Paris Company had been made *in the exercise of the Tabacos Company's license privilege*, the state would have had jurisdiction to tax it. It did have jurisdiction to tax the licensed London Company contract because it was made in the *"exercise or use of the right* of the London Company to do business in the Philippines *under its license."* The privileges conferred on a *manufacturing* company by its license to do business in the state are essentially different from those conferred by a license to do an *insurance* business. Furthermore, the former is not, while the latter is, clothed with a public interest and subject to a greater degree of regulation.

In *Great A. & P. Tea Co.* v. *Grosjean*, 301 U. S. 412, the identity in principle of a state's jurisdiction to tax with its jurisdiction to exercise its regulatory police power is emphasized. The case involved the validity of a Louisiana statute imposing license taxes on chain stores. The amount of the tax on each store was graduated or measured by the number of stores operated by the licensee

in the entire United States. The A. & P. Company operated over fifteen thousand stores in the various states but only 106 in Louisiana, and the tax on each of its Louisiana stores was $550.00. Another licensee operated 92 stores all in Louisiana and the tax on each of its stores was $30.00. The statute was challenged as violative of due process because allegedly it was, in effect, a tax upon stores located outside the state. The court, however, held it valid as a regulatory measure, and in effect an exercise of the police power through the medium of taxation. Mr. Justice Roberts, speaking for the court, said:

> "Our decision need not, however, rest on conceptions of subject, measure and rate of tax. Much broader considerations touching the state's internal policy of police sustain the exaction. The tax is laid solely upon intrastate commerce. In the exercise of its police power the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in such manner as to abate evils deemed to arise from its pursuit. Whatever a state may forbid or regulate it may permit upon condition that a fee be paid in return for the privilege, and such a fee may be exacted to discourage the prosecution of a business or to adjust competitive or economic inequalities. Taxation may be made the implement of the exercise of the state's police power; and proper and reasonable discrimination between classes to promote fair competitive conditions and to equalize economic advantages is therefore lawful" (81 L. ed. 1193, 1201).

Upon principle it is difficult to perceive any theory upon which any possible distinction can be drawn between a state's *jurisdiction* to exercise its taxing power and its

jurisdiction to exercise its police power or any other proper governmental power. The Constitution certainly contains no provision which can be made the basis for any distinction. The Tenth Amendment provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states, respectively, or to the people." Of course, if the state has no jurisdiction over a transaction, it may neither tax nor regulate it, but if it does have jurisdiction, it necessarily follows that it may do both. Not only does the Constitution make no provision for cases in which a state's taxing jurisdiction may exist but where its jurisdiction to exercise the police power does not exist, but I have been able to find no decision of this Court or any other court which recognizes any such distinction. On the contrary, this Supreme Court in the *Philippine Island Tobacco Case, supra* (275 U. S. at p. 95) said:

> "We are unable to see *any sound distinction* between the imposition of a so-called tax and the imposition of a fine in such a case. A so-called tax is just as much an interference with the liberty of contract as is a penalty by fine, *where the subject matter giving rise to the imposition is beyond the jurisdiction of the state.*" (Italics supplied.)

Of course, the imposition of a fine is necessarily an exercise of the regulatory police power, while a tax may or may not be such an exercise.

It follows as a necessary conclusion, therefore, from what has been said under subheads A, B and C, *supra*, that the second proposition is unquestionably supported by the evidence and the decisions of this Court, and that

Virginia has jurisdiction to regulate the performance in this State of all Virginia coverage casualty and surety contracts negotiated or made outside of the state.

III.

Virginia May Prohibit the Doing in Virginia by an Insurance Company Licensee of Any Act in Connection With or in the Performance of a Virginia Coverage Contract Made by it Outside the State in Violation of Virginia Laws, by the Imposition of a Fine or by Revocation of Said Company's License to do Business in the State.

Section 4231 of the Code of Virginia provides that any insurance company violating any provision of the statute here challenged shall be fined not less than ten dollars nor more than one thousand dollars for each offense.

The State's jurisdiction to impose this fine is clearly established by the decisions of the Supreme Court which have just been discussed, holding that the jurisdiction to fine is co-extensive with the power to tax. (II-C, *supra*.)

Section 4180 of said Code empowers the State Corporation Commission to suspend or revoke the license of any insurance company "which fails or refuses to perform any lawful requirements imposed by the laws of this state." See also Section 4223 of the Code.

The action of the State in revoking a license to do business in the State, is, like a fine, an exercise of the police power. That it is a proper exercise of such power is well established. In *Hanover Fire Ins. Co.* v. *Carr*, 272 U. S. at p. 515, 71 L. ed. at p. 382, Mr. Chief Justice Taft thus stated the doctrine:

> "* * * The state in dealing with foreign corporations may properly and without discrimination as between them and domestic companies regulate

> the former by a provision that for a failure by them to comply with any valid law governing the conduct of their business in the state the license already granted may be revoked. That is a legitimate condition in the treatment of foreign companies which do not have property and home within the state. It is a police regulation. * * *"

The revocation of the license to do business in the state being, like the imposition of a fine, an exercise of the police power, the state's jurisdiction to do the one is conclusive of jurisdiction to likewise do the other.

The effect of the statute, as applied to Virginia contracts made outside the State, is to require insurance companies to exercise their license privileges, at least in doing in Virginia acts in performance thereof, in such manner as to conform to the requirements of the laws of the State. An illustration of an appropriate application of this statute would be to revoke the license of an insurance company which would persist in making workmen's compensation or fleet automobile liability insurance contracts outside the State in violation of the prescribed Virginia rates. It might be contended that there is no violation of this law in Virginia until there has been payment of a loss under the contract. But under the decisions hereinbefore cited the company is doing business in the State under its license when it inspects the machinery or automobiles, or holds safety meetings, adjusts claims or otherwise services the contracts. In fact, many proposed risks are examined or inspected in the State and reports made *before* the insurance company determines whether it will make the proposed contract or issue the policy. Likewise, should an insurance company licensee make outside the State a similar contract

without procuring the countersignature of a Virginia resident agent or without paying to such agent the commissions required by the statute, and should it have its inspectors, engineers or claim adjusters perform any act in Virginia in connection with or pursuant to such contract, such company would become liable to fine or to revocation of its license. The only legal way the company can perform such a contract in Virginia is to associate therewith, in the manner above stated, a local resident Virginia agent. If it should attempt to perform the contract without such association it would clearly violate Virginia laws. *Bothwell* v. *Buckbee, supra.*

As said in *Home Ins. Co.* v. *Dick,* 281 U. S. 407:

> "Ordinarily, it (a state) may prohibit performance within its borders, even of contracts validly made elsewhere, if they are required to be performed within the state and their performance would violate its laws."

IV.

The Fact that a Virginia Coverage Contract, Made by an Insurance Company Licensee in Violation of Virginia Laws, is Made Outside the State Does Not Impair the Jurisdiction of Virginia to Revoke the Company's License to do Business in the State Because of MAKING Such Contract in Violation of Her Laws.

It has been heretofore shown that every Virginia coverage casualty or surety contract, though made outside the State, contemplates and permits the doing of acts in Virginia, and that the making of the contract is itself an exercise of the insurance company's license privilege of doing business in the State (11-B, *supra*).

It has also been shown that the State may fine or revoke the license of such a company for *the doing of any acts in Virginia* in connection with or in performance of any such contract made outside the State in violation of her laws.

The fourth proposition above stated is that the *making* of the contract in such manner as to violate the legal requirements of the State subjects the insurance company to revocation of its license; that the making of the contract, without obtaining the required countersignature and associating therewith the Virginia agent by paying him the required commissions, *without doing any act inside the State*, subjects the company to such revocation.

While the jurisdiction of the State to revoke the license for *acts done in the State* pursuant to such a contract is sufficient to support the validity of the statute, it can be more effectually enforced if such revocation may be had solely because of the *making* of such a contract without complying with Virginia laws.

The evidence clearly shows that persons negotiating insurance contracts attach a great deal of importance to the fact that the insurer is licensed to do business in the state of coverage. The appellant's witness Nicholls admitted that it is an advantage to the assured to be able to bring suit in the state where the loss occurs (R. 153). This is an obvious truth, because the witnesses to the event causing the loss live in the state of coverage, and it would cause great inconvenience and expense to transport them to some other state where process may be lawfully executed. Appellants' witness Thomas, a New York broker, testified that he never places his clients' risks in companies not admitted to the state where the risk is located; that he and his associates did not "want

insurance companies that are only entered in a few states. *We want complete service wherever we need it"* (R. 812). Since the making of the contract contemplates that the insurance company's engineers, inspectors and claim adjusters will render service in connection therewith in the state of the situs of the risk, it is necessarily true that a nonadmitted company could not legally carry out the contract, and would prove entirely unsatisfactory. *Bothwell* v. *Buckbee, supra.* Another of appellants' witnesses, Otis, also a New York broker, testified that as to a fleet automobile risk "or a risk that is domiciled in Virginia, obviously they have to service it, and in those cases we are always certain of having a company on the risk that is entered to do business in that state." He was then asked the question: "Would you place a risk of that kind in a nonadmitted company?" To which he replied: "Not a risk that is domiciled in the state" (R. 876).

Thus the insurance company is clearly using its Virginia license privilege as an inducement to assureds to contract with it. Suppose, without disclosing the fact to the assured, it makes the contract in violation of Virginia laws so as to incapacitate itself from legally rendering this service in Virginia. Obviously this operates as a fraud upon the assured; for which the insurer could be made to respond in damages. See section 360, comment b. Restatement of the Law, Conflict of Laws. It would be an anomalous situation, indeed, if Virginia were helpless to prevent such a flagrant abuse of the license privileges granted by her.

It seems clear that, in a proceeding in Virginia to declare the forfeiture of the insurance company's license in such a case, it could not be heard to say that it did not

perform its obligations contemplated by the contract, or did not intend to perform same. The mere fact that the act of making the contract takes place in New York does not, in any sense, remove it from the effect of the Virginia statutory provisions prescribing the terms under which it must exercise its license privilege. This is well illustrated in the case of *Bradford Electric Company* v. *Clapper*, 286 U. S. 145, 76 L. ed. 1027, which involved the right of an employee to sue his employer for personal injuries sustained through the employer's negligence. The contract of employment was made in Connecticut. The statutes of that state provided compensation payments for injuries but denied the right to sue for damages. The employee was temporarily working in *New Hampshire*, whose laws permitted such action, and there sustained the injuries. He brought an action for damages in the United States District Court of New Hampshire and the defense was that, the employment having been made in Connecticut, the laws of that state which prohibited such actions controlled the rights of the parties, and that these rights were not affected by the fact that *the act which caused the injury was done in New Hampshire*. In sustaining this ground of defense and in holding that laws of Connecticut controlled the legal consequence of the defendant's act done in New Hampshire, Mr. Justice Brandeis said:

> "The administratrix contends that the full faith and credit clause is not applicable. The argument is that to recognize the Vermont Act as a defense to the New Hampshire action *would be to give to that statute an extra-territorial effect, whereas a State's power to legislate is limited to its own territory*. It is true that full faith and credit is enjoined

by the Constitution only in respect to those public acts which are within the *legislative jurisdiction* of the enacting State. See *National Mut. Bldg. & L. Assn.* v. *Brahan*, 193 U. S. 635, 647, 48 L. ed. 823, 828, 24 S. Ct. 532; *Olmsted* v. *Olmsted*, 216 U. S. 386, 395, 54 L. ed. 530, 533, 25 L. R. A. (N. S.) 1292, 30 S. Ct. 292. But, obviously, *the power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries.* It has power through its own tribunals to grant compensation to local employees, locally employed, for injuries received *outside its borders*, compare *Quong Ham Wah Co.* v. *Industrial Acci. Commission*, 255 U. S. 445, 65 L. ed. 723, 41 S. Ct. 373, dismissing writ of error, 184 Cal. 26, 12 A. L. R. 1190, 192 Pac. 1021, and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries.

* * * * *

"The answer is that such recognition in New Hampshire of the rights created by the Vermont Act, can not, in any proper sense, be termed an extraterritorial application of that Act. Workmen's compensation acts are treated, almost universally, as creating a statutory relation between the parties—not, like employer's liability acts, as substituting a statutory tort for a common law tort. [citing authorities.] The relation between Leon Clapper and the Company was created by the law of Vermont; *and as long as that relation persisted its incidents were properly subject to regulation there.* * * *." (76 L. ed. 1033, 1034. Italics supplied.)

Paraphrasing the last sentence quoted it may with equal truth be said, in so far as the question of jurisdiction is concerned, that the relation between Virginia and the licensee company was created by the laws of Virginia and

as long as that relation persisted incidents to the use of the license privilege, such as making a Virginia coverage contract, are properly subject to regulation wherever the contract is made. The fact that the contract is made in New York no more strips Virginia of jurisdiction to take legal cognizance of same than the fact that the employee was injured in New Hampshire deprived Connecticut of the power to fix the legal consequences of his injury.

Another case which is especially enlightening on this precise question of the jurisdiction of a state to legislate with respect to practices and acts of its licensees which take place outside the state is the Louisiana chain store case, *Great A. & P. Tea Co.* v. *Grosjean, supra*, in which was challenged the validity of a chain store tax, the amount of the tax on each store *being determined by the entire number of stores operated by the licensee in the United States*. The A. & P. Company contended that it was beyond the jurisdiction of Louisiana to give legislative effect to that company's operations in other states. Said the court, "the claim is, essentially, that even if local evils flow from the appellant's methods the state cannot control those evils because its power is limited to conditions created by the members of the chain found within the state." The court said further, in answer thereto:

> "* * * The policy Louisiana is free to adopt with respect to the business activities of her own citizens she may apply to the citizens of other states who conduct the same business within her borders, *and this irrespective of whether the evils requiring regulation arise solely from operations in Louisiana or are in part the result of extra-state transactions.* It is not a denial of due process to adjust such license taxes as are here involved to meet the local evil

resulting from business practices and superior economic power even though those advantages and that power are largely due to the fact that the taxpayer does business not only in Louisiana but in other states." (81 L. ed. 1202. Italics supplied.)

The Court's attention is again directed to the fact that the above case also held that this tax was an exercise of the state's regulatory police power; also attention is directed to the Philippines Tobacco case which sustained the state's jurisdiction to tax the mere making outside of the state of an insurance contract covering a fire risk located in the state, though the insurance company actually did no act in the state in connection with same, the court saying in the Tobacco case that *that particular tax was intended as a regulatory measure.*

Connecticut Gen. L. Ins. Co. v. *Johnson,* 303 U. S. 77, 82 L. ed. 672, involved the jurisdiction of a state to tax a reinsurance contract made outside the state. The court reaffirmed the doctrine laid down in the Philippines Tobacco case that the state's jurisdiction to tax an insurance contract made outside its borders *is to be determined by whether the contract was made in the exercise of the insurance company's license privilege.* The court said that "the writing of policies without the state insuring residents and risks within it is taxable because within the granted privilege," citing the Philippines Tobacco case. And the court said further, in denying the state's jurisdiction:

"But the limits of the state's legislative jurisdiction to tax, prescribed by the Fourteenth Amendment, are to be ascertained by reference to the incidence of the tax upon its objects rather than the ultimate thrust of the economic benefits and burdens

> of transactions within the state. As a matter of convenience and certainty, and to secure a practically just operation of the constitutional prohibition, *we look to the state power to control the objects of the tax as marking the boundaries of the power to lay it.* Hence it is that a state which controls the property and activities within its boundaries of a foreign corporation admitted to do business there may tax them. But the due process clause denies to the state power *to tax* or regulate *the corporation's* property and *activities elsewhere.*" (82 L. ed. 677. Italics supplied).

This statement can be reconciled with the power of the state to tax the contract made outside its borders but insuring risks therein only upon the principle that the place of making the contract is immaterial, *provided it is made in the exercise of the granted privilege.* The court expressly says in the above quotation that the state cannot tax an object (contract) which it cannot control, and that the power to control is the test of the power to tax. It therefore follows, as a necessary conclusion, that the adjudicated power of the state to *tax* the contract carries with it an adjudication that the state possesses the power to control it. If the state did not have the power to control and regulate the making of the contract, then the state *could not tax it* under the test laid down in this case.

Clearly Virginia has jurisdiction and power to regulate the making outside the State of Virginia coverage contracts by its insurance company licensees. Of course this regulation must be a constitutional one, in the sense that it must not be arbitrary or capricious, and this question will be next considered.

V.

The Objects and Purposes Sought to be Attained by the Challenged Legislation are Legitimate and Proper, and the Means Employed to that End are Not Arbitrary or Capricious But are Reasonable and Appropriately Adapted Thereto.

The statute here challenged involves an exercise of the regulatory *police power* of the state. *German Alliance Ins. Co.* v. *Lewis,* 233 U. S. 389. It may not be inappropriate, therefore, at this time to refresh the memory of the Court by calling attention to a few well known elementary principles relating to its exercise. While the police power is not susceptible of accurate definition, yet it is "one of the most essential of powers, at times the most insistent, and always one of the least limitable." *District of Columbia* v. *Brooke,* 214 U. S. 138. It extends, "not only to regulations which promote the public health, morals and safety, but to those which promote the public convenience or the *general prosperity.*" (Italics supplied.) *Eubank* v. *Richmond,* 226 U. S. 137. As said by Judge Prentiss in *City of Richmond* v. *C. & P. Tel. Co.,* 127 Va. 632: "In the police power, which cannot be surrendered, * * * but which, except as restrained by constitutional inhibition, is unlimited, is found the inexhaustible source of those new legislative regulations which, in response to the needs of a progressive civilization, are designed to promote the public convenience and *general prosperity.*" (Italics supplied.)

As to the legal effect of an apparent deprivation of rights guaranteed under the fourteenth amendment, particularly due process and equal protection, by a state's exercise of its police power, the rule is thus stated in 11 Am. Jur. 995-7:

> "In accordance with the settled principle that no part of the Federal Constitution was intended to hamper a valid exercise of state police regulation, it is particularly established by overwhelming authority that the Fourteenth Amendment was not designed to interfere with, and does not interfere with, curtail, restrain, destroy, or take from the states the right duly and properly to exercise the police power. * * *"

In support of the text numerous decisions of this Court are cited.

In *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, Mr. Justice McKenna thus defined the police power and stated the test to be applied to determine the validity of its exercise by the state:

> "This court has had many occasions to define, in general terms, the police power, and to give particularity to the definitions by special applications. In *Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 561, 592, it was said that 'the police power of a state embraces regulations designed to promote the public convenience or the *general prosperity*, as well as regulations designed to promote the public health, the public morals, or the public safety'; and that the validity of a police regulation 'must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public purpose'." (222 U. S. 232. Italics supplied.)

It is, of course, well settled that the state's exercise of its regulatory police power must be a reasonable one and not arbitrary or capricious. The test of what is reasonable, however, depends upon the facts and circumstances

to which each exercise of the power is to be applied. A recent decision of this Court in a case somewhat similar to this furnishes a most instructive precedent. *O'Gorman & Young* v. *Hartford F. Ins. Co.*, 282 U. S. 251, involved the validity of a New Jersey statute which provided that commissions paid by fire insurance companies to their agents should be "reasonable." The agent plaintiffs in that case had a contract entitling them to be paid 25% commissions, but the lower courts found that 20% was the prevailing rate and therefore the contract rate could not be collected. In his opinion, Mr. Justice Brandeis said:

> "The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, *the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear* upon the face of the statute, or from any facts of which the court must take judicial notice, *that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy.* The action of the legislature and of the highest court of the state indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness." (282 U. S. 257-8. Italics supplied.)

Thus, the case holds, in effect, that the burden rests on him who challenges the exercise of the police power as unreasonable to adduce facts which prove it to be so.

Referring to one of the evils which might be remedied, the opinion states:

> "* * * Moreover, lack of a uniform scale of commissions allowed local agents for the same service *may encourage unfair discrimination among policyholders by facilitating the forbidden practice of rebating.* In the field of life insurance, *such evils led long ago to legislative limitation of agents' commissions.*" (282 U. S. 257. Italics supplied.)

In the light of the foregoing principles the question is presented whether there exist, in the conduct of the Virginia insurance busines , evils for which our statute affords an appropriate remedy in whole or in part.

The Evils to be Remedied

The objects and purposes of the statutory provisions here challenged are to discourage, correct or remedy a number of evil and harmful practices now prevailing in the conduct of the insurance business relating to contracts made outside of Virginia but covering risks in Virginia. These practices sought to be corrected, in whole or in part, may be briefly summarized as follows:

(1) Rebating or rate-cutting by insurance companies to assureds.

(2) Rebating to assureds of part of their commissions by nonresident brokers.

(3) Unfair or unlawful competition between nonresident brokers and Virginia resident agents.

(4) Unfair or unlawful competition between foreign insurance company "groups" and Virginia insurance companies.

(5) The removing from Virginia of a large part of her insurance agency commission business and depriving the State, her insurance agents and citizens generally of the benefits incident thereto, and centralizing this business in New York.

(6) The lack of an impartial local agent to service Virginia risks contracted for outside of the State.

These practices will be discussed separately in the order named.

(1) *Rebating or rate cutting by insurance companies to assureds*

As has been shown heretofore the practice is prevalent among the insurance companies in dealing with New York City brokers to bid against one another on a program of proposed coverage for large national corporations, the program embracing not only numerous coverages of the same line in many states, but also combining coverages of all types of fire, casualty and surety risks in one proposal. It is customary to bid one price on the whole hotchpotch combination. As to some of the risks in some of the states, there are fixed rates, prescribed by law, which as to other risks there are no fixed rates in many of the states. The obvious effect of this practice is the inclusion in the bid price at a nominal figure, or at a ridiculously low figure, many risks as to which the rates are not prescribed by law, while listing at the proper rates those risks which are so prescribed. In a case of this kind, of course, no actual rate is adhered to, in fact, on any of the risks. It is a mere matter of juggling the figures on the non-fixed rates so as to arrive at the bid price for the whole. Virginia Code, section

4222(c) prohibits any insurance company from offering, paying or allowing any rebate of premium.

This practice of rebating, which in the opinion just quoted from this Court held to be an "evil," is comparable to that which formerly prevailed among brewers of giving or lending a retailer his fixtures, or selling him ice or other supplies, or renting him the premises at greatly reduced prices to induce him to handle the brewer's product exclusively. This insidious custom is now expressly prohibited by section 53 of the Virginia Alcoholic Beverage Control Act, and it is made a misdemeanor for any manufacturer, bottler or wholesaler of alcoholic beverages, "either directly or indirectly [to] sell, rent, lend, buy for or give" to any retail licensee "any money, equipment, furniture, fixtures or property with which the business of such retailer is or may be conducted." Section 41 of said act goes further and even prevents the sale of beer to retailers "except for cash."

If an insurance company should give an assured without charge a policy covering an open rate risk, provided such assured would contract for another risk at the rate prescribed by law, the obvious effect is a rebate and a violation of the legal rate as to the latter risk. And yet there is no difference, either in principle or result, between such a case and the practice followed by the appellant companies in bidding on these hotchpotch contracts.

The Court may properly inquire at this point: In what way does this statute tend to remedy this practice?

In the first place, the fact that the insurer is required to pay full commissions and hence not give the assureds the benefit of a reduction or rebate the brokers may make in their commissions tends to more nearly equalize the cost of insurance to the assureds, which is the primary objective in prohibiting rebates. Under present practices,

the chain stores buy their insurance cheaper than the local Virginia merchant (Op. R. 51-2).

In the second place, the fact that information respecting such a hotchpotch contract will become known to the independent resident commission agent when he countersigns will tend to discourage the practice.

Thirdly, the fact that such agent will acquire such information when countersigning the contract will enable the State, through reports, to secure it from such agent, and take such steps as are necessary to correct the evil. Unless the State is deprived of jurisdiction to prescribe Virginia coverage rates in contracts made outside the state, these hotchpotch contracts obviously violate Virginia rate-fixing laws [Virginia Code, sec. 4222(c)], and the resident agent, associated with a part of such a transaction, could be required to disclose such violations to the Bureau of Insurance.

(2) *Rebating to assureds part of their commission by nonresident brokers*

This customary practice which New York brokers follow and which is prohibited to resident agents [Code of Virginia, sec. 4222(c)] will be completely eliminated, because the insurance company is required to pay the full producers commission to the Virginia agent. While he may pay the New York broker half of the commission it is not likely that the broker will rebate any part of that.

(3) *Unfair or unlawful competition between the nonresident brokers and Virginia Resident Agents*

C. F. McNeil, one of the appellants, who is Richmond Branch Manager for the appellant Travellers Company, admitted that the New York brokers are given a better

rate by the insurance companies than these companies will give to a Virginia agent; whether the contract is one permitting equity rating or experience rating, and that a Virginia agent would have little chance in such a competition (R. 624-5). Mr. McNeil did not predicate his statement either on the practice of rebating by the New York broker, or on the practice of the companies in bidding on hotchpotch contracts. He had reference solely to contracts covering a specific risk which was subject to special rating. Of course, where, in addition to the lower rate, the bid price is also reduced by the amount the New York broker rebates from his commission, it is quite obvious that the Virginia resident agent has no chance in the world of successfully negotiating a contract in competition with the broker. If the *New York producing agents* have found it impossible to compete with the *brokers* who hawk and peddle the contract around, and as a result have been put out of business (R. 861), what possible chance can a Virginia resident agent have in such a contest?

This competitive advantage which insurance companies give New York brokers over Virginia agents is certainly an unfair one. The practices of giving these brokers better rates, of permitting rebating of their commissions, which the Virginia agent is forbidden by law to do, cannot be defended on any principle of fair play. Nor can there be any defense of the practice of permitting New York brokers to negotiate hotchpotch contracts including Virginia risks in which the rate is fixed by law. There can be no doubt that these bid prices on such contracts cannot lawfully be contracted for in Virginia. The inevitable result of these practices is a gradual flowing to these New York brokers (who are really auctioneers,

auctioning of risks located in other states) of the business of negotiating contracts for large risks. Even a large corporation domiciled in Virginia, and whose business is confined to Virginia, would have a strong incentive to combine all its risks in one "bid price" contract and therefore to send the business to these brokers to auction off among the insurance companies.

The effect of the statute here challenged is to adjust to some extent this competitive advantage enjoyed by the New York broker over the Virginia agent by requiring the association of the latter in all Virginia coverage business.

(4) *Unfair or unlawful competition between foreign insurance company "groups" and Virginia insurance companies.*

Virginia has no group of affiliated fire, casualty and surety insurance companies. The domestic fire insurance company must adhere to the standard rate filed with the Bureau of Insurance, while the domestic casualty company must conform to the rates fixed for workmen's compensation and automobile liability insurance. It is perfectly obvious that they have no shadow of a chance to compete with an affiliated group of foreign companies who bid on a hotchpotch contract combining not only all these lines but also including in one price risks in numerous other states as well as Virginia. Section 4222(c) of the Virginia Code prohibits an insurance company, not only from giving any rebate of premium to an assured, "as an inducement to any person to have issued any contract of insurance of surety," but also makes it unlawful for such company to offer "any inducement whatever, *not specified in the contract.*" This means specified in the

Virginia coverage contract itself, not a hotchpotch contract which includes as merely a part the underlying subordinate Virginia coverage contract (R. 125). In Virginia, automobile liability policies issued to public carriers are required to be filed with the State Corporation Commission, while workmen's compensation policies must be filed with the Industrial Commission. The practice is to file, not the entire hotchpotch contract, but only the underlying Virginia coverage contracts (R. 125). These contracts certainly would not show on their faces the fact that there was a hotchpotch contract, the price for which had been arrived at after competitive bidding and after giving the assured, as an inducement to make same, the benefit of reductions or rebates in the brokers' commissions. It is apparent that a Virginia insurance company cannot compete with such rebates and other unlawful "inducements."

As to the benefit which the Virginia insurance company would derive from this statute—it is not so clear and direct as that the agent will receive. The omission from the bid price of the brokers' rebate of commission would more nearly equalize the cost of the insurance. Also the enactment of similar statutes in other states will at least prevent the brokers from rebating part of their commissions on risks in other states and prevent this rebate from being reflected in the bid price for the insurance. The brokers testified that if this should happen they would have to go out of business. This would have the effect of removing the insurance business from the auction block and returning it to the agents where it properly belongs. It probably would also result in the elimination of hotchpotch interstate contracts. In any event, judicial confirmation of the state's jurisdiction to

exercise its police power in connection with these out of state transactions will make possible the passage of legislation which can correct the evil.

(5) *The removing from Virginia of a large part of her insurance agency commission business and depriving her insurance agents and citizens generally of the benefits incident thereto, and centralizing this business in New York.*

States compete for business to be carried on within their borders, just as nations compete in world commerce. States and municipalities have chambers of commerce whose principal functions are to bring business into their respective spheres of activitiy. Virginia's Conservation Commission has been given liberal appropriation by the General Assembly to advertise and attract business to the State. The happiness, prosperity and well being of her people are dependent upon the transaction within her borders of a satisfactory volume of business. To promote this prosperity is a proper and legitimate purpose for the exercise of the State's police power. (See cases cited, *supra.*)

Insurance against risks by industries engaged in business activities in the State is but a normal incident to that industry, and this insurance is naturally regarded as legitimate Virginia business; one which, in a broad sense, belongs to her citizens. The money to pay the cost of insurance covering Virginia activities is a charge against that activity and is earned through its operation. It is clear from the testimony of appellants' own witnesses in this case that Virginia has been deprived of the cream of this insurance agency business by unfair and destructive practices of rebates and rate cutting and by dis-

criminatory favors granted to the New York broker. The average assured in Virginia is also discriminated against by preferential rates given the national corporation.

The effect of this act will be to remedy to the extent of at least fifty per cent the discrimination against the agency business, and to a considerable extent that against the local assured.

Centralization of the conduct of the nation's business in New York, it is generally believed, is one of the chief causes of business and industrial dislocations. The present statute tends to bring Virginia business back to Virginia.

(6) *The lack of an impartial Virginia agent to service Virginia risks contracted for outside the state*

It is not necessary to repeat here what has already been said and what will hereafter be said with respect to the valuable services customarily rendered both to the insurer and the assured by the Virginia commission agent who alone is able to render such services. The testimony of the appellees' witnesses Tabb, DeJarnette, Clark and Boswell, all of whom are Virginia agents, covers the ground completely and in detail. What they have to say is corroborated by some of appellants' own witnesses and by public addresses of insurance executives hereinabove quoted from. Prior to this statute it was rarely the case that a Virginia resident agent was associated with the New York brokers in casualty and surety contracts, so that neither the insurer nor the assured has had the benefit of this service in these risks. Furthermore, the State has been deprived of the services of these Virginia agents in the prevention of accidents in these workmen's compensation and fleet au-

tomobile liability risks, which they customarily render in connection with contracts they negotiate or with which they are associated (R. 381-2).

The Virginia Association of Insurance Agents, (through whose members about 85% of Virginia insurance is negotiated), has indicated that as a result of this statute all these services will be hereafter rendered by those agents who countersign and receive the statutory compensation for being associated with the risks. (See resolution quoted *supra*.)

The existence of all these evils, however, will not justify the challenged legislation if it is arbitrary, capricious or unreasonable, which question will now be considered.

THE REMEDY PROVIDED BY THE STATUTE IS REASONABLE

That these practices of rebating of brokers' commissions and rebating of premiums and offering of unlawful inducements, in violation of Virginia laws, exist cannot be denied. In fact their existence is proven by the appellants' own evidence. That they are harmful to, and discriminatory against, the general run of Virginia assureds, all Virginia insurance companies and all Virginia commission agents is patent and obvious. Yet in the face of this deplorable condition which now exists, and for which the appellants are responsible, they come into this Court and set up the claim that *they* are being discriminated against by this statute. They evidently entertain the view that they have the constitutional right to engage in unlawful discriminatory practices, and that any law which corrects or tends to correct their discriminating against the people of Virginia is itself a discrimination against them. If Virginia is to permit any lawful discrimination at all under her statutes it is but natural

that it should be in favor of and not against her own citizens. But there is no discrimination. The evidence shows that every legitimate premium rate is loaded with a certain percentage for agents' commissions. The statute merely provides that this percentage which is allocated to this commission shall be paid to a Virginia commission agent, with the proviso that he may, in turn, pay not more than half of it to a Virginia licensed nonresident broker if he negotiates the contract and the Virginia agent is associated with him. As a means of assurance that the above requirement will be complied with, the insurance company licensee is prohibited from issuing any Virginia coverage contract unless such commission agent who is associated with the transaction countersigns same. These two requirements constitute the remedy provided by the statute for the evils pointed out above. It cannot injure the appellants for the Virginia agent to retain at least half of that part of the premium dedicated to the payment of the agent's commission. The suggestion is made in the record that, unless the practice of rebating by brokers is continued, the appellant companies will have difficulty in meeting the competition of mutuals. But the appellants have no vested constitutional right to resort to unlawful practices to meet lawful competition.

Furthermore, the uncontradicted testimony of many witnesses shows that for about fifty years it has been customary in the fire insurance line for most policies to be countersigned by a Virginia resident commission agent and for him to receive a commission of twenty per cent where he negotiates the contract; and in cases where the contract is negotiated by a broker outside the State, the Virginia countersigning resident agent associated therewith has customarily received 10%, or one-half of the

commissions. And not only is this true of Virginia, but the uncontradicted evidence is that a like custom prevails throughout the United States in the fire insurance business. This custom has not proven destructive to the fire companies affiliated with the appellant casualty and surety companies, and no reason has been pointed out why there should be any different result in its application to the casualty and surety business. It is difficult to conceive how a practice as arbitrary, capricious and unreasonable as the appellants claim this to be could have grown up naturally in the fire insurance business throughout the entire country. And yet the sole effect of the statute here challenged is to compel the casualty and surety companies to conform to the same practices which custom itself has established for the fire insurance companies. In fact the appellants' witness, Nicholls, New York Branch Manager of one of the appellant companies admitted the justice of participation in these out of state negotiated contracts by the resident commission agent, and the propriety of regulating same by law. He said, "I believe if the producers and the companies could get together on a uniform law affecting this thing, that much of this trouble that this is about to create could be eliminated, and it seems unfortunate that that has not been done before" (R. 159). Appellants' broker witness Otis testified that it is getting to be the custom generally in the United States for the local agent to expect participation in contracts covering risks in his territory (R. 882).

As to the basis of participation, the appellants claim that the requirement that the Virginia agent receive half of the producer's commission is unreasonable. However, the undisputed evidence shows that this is the practice the fire insurance companies and their agents have estab-

lished, and further shows that there is no reason for applying a different basis in the casualty and surety lines. The appellants' broker witness Gessner testified he could think of no reason for making any distinction (R. 928). On the other hand, appellees' witness Tabb testified that the resident agent would normally render more valuable local service in the casualty and surety lines, because of changing conditions, than in fire risks (R. 361). This statement was not in any way contradicted by any other witness. (See opinion below R. 61-2.)

In view of this old established custom in the fire insurance business of paying the resident agent half the producers' commission on contracts negotiated outside the state covering risks in his territory, and of the further undisputed fact that there is no reason for making any distinction in this respect between the fire line and the casualty and surety lines, it is difficult to understand upon what theory the claim is made that the statute which establishes the same practice in the casualty and surety lines is arbitrary, capricious and unreasonable. The practice in the fire business has grown up throughout the United States as the result of many years of experience, and has proven successful. It must be based on considerations of justice, equity and fair play. In fact, if the statute prescribed a different basis of participation for the casualty and surety business than this which has proven itself just throughout these years, it might indeed be challenged as unreasonable or arbitrary in disregarding these established standards of practice.

The appellants claim that the requirement that these out of state contracts covering Virginia risks *shall be countersigned by a resident Virginia commission agent* is unreasonable and arbitrary. On the contrary, it is

obvious that this is absolutely necessary to insure the company's compliance with the provision requiring the payment of his share of the commissions to the resident agent, without which the harmful practices heretofore detailed will undoubtedly continue unabated. In the absence of the countersignature requirement there is absolutely no means of any agent knowing that the contract has been made. Of course, it will be argued that the appellant companies would associate him anyway if the law requires it. But laws are not enacted on the theory that there will be voluntary compliance. For the law to accomplish its purpose, effective means must be provided to prevent violations. It is obvious that the *principal safeguard* against violations of the statutory provisions for the association of local agents in these transactions on a compensatory basis, and their consequent rendition of the contemplated services, *is the requirement that the contracts be countersigned by these agents.* The mere fact that the appellant companies do not like it, or may be to some extent inconvenienced by the requirement, does not affect the constitutionality of the statute. Nearly all regulatory statutes cause inconvenience. But, with the exception of certain blanket policies, it has been a general voluntary custom in the fire insurance business for half a century, and if it had occasioned much inconvenience some other substituted method would undoubtedly have been devised.

The appellants seem to be proceeding in this case on the idea that this countersignature requirement is a very unusual sort of statute. But this is not true. On the contrary, statutes requiring countersignatures on these contracts negotiated outside the state by agents resident in the state of coverage have been in force for many

years in nearly all the states (R. 62). The fact that so many states have found it necessary to enact legislation similar to that here challenged speaks eloquently for the need of this type of legislation to correct the injurious practices heretofore pointed out which seem to be repugnant to their ideas, as well as those of Virginia.

In 1912 the General Assembly of Virginia enacted a statute prohibiting foreign insurance companies qualified in this State from making Virginia coverage contracts "save through regularly constituted agents of such companies residing in Virginia" (Acts 1912, 549-550). This was incorporated in the 1919 Code as section 4222. It was always interpreted as requiring the signature or countersignature of a Virginia agent upon all such contracts. In 1936 the statute was amended so as to include an express provision that such contracts should not be issued unless countersigned by such a Virginia resident agent. But the only effect this amendment had on casualty and surety contracts was to cause the insurance companies to have them signed by their own employees who were paid a salary. As the testimony heretofore pointed out shows, these employees considered their act of countersigning a mere perfunctory act which they would perform without even examining the contract. Then in 1938 the statute was further amended and a new code section 4221-a was enacted, the effect being to prohibit insurance companies from issuing such contracts unless countersigned by a regularly constituted Virginia resident *commission* agent. Section 4226-a was also amended to provide that this resident commission shall receive full commissions, with the proviso that he may pay to a Virginia licensed nonresident broker associating him with the contract not in excess of fifty per cent thereof.

It thus appears that the legislation here challenged is not entirely new but has been brought about by amendments to statutes already existing, the necessity for which amendments has been occasioned by the harmful and injurious practices of the appellant companies heretofore pointed out.

Appellants also contend that the practices complained of take place outside of Virginia and that it is unreasonable for the State to undertake to regulate the consequences of acts which occur outside its borders. But, as has been shown, the company's acts in carrying on these injurious practices are done *in the exercise of its Virginia license privilege,* and therefore are within the State's regulatory jurisdiction. Furthermore, while the acts *are done* principally in New York, *the harmful effects or results* of these acts *occur in Virginia.* It was very clearly decided in the Louisiana chain store case, (*Great A. & P. Tea Co.* v. *Grosjean, supra*), that a state may regulate a foreign corporation which has submitted itself to its jurisdiction by securing a license to do business therein, "to adjust competitive or economic inequalities," and that such regulatory action is a proper and reasonable exercise of the police power "irrespective of whether the evils requiring regulation arise solely from operations in Louisiana or are in part the result of extra-state operations." It is clear that it is not unreasonable for Virginia to undertake to correct the evil practice of these licensee appellants in granting rebates in connection with contracts negotiated in New York; and that to this end the State may properly exercise in Virginia its governmental control over them to which they submitted themselves when securing licenses to do business in the State. It is significant, in this connection,

to call attention to the fact that one of the evils stressed by the court in the chain store case was that the A. & P. Company "received in the year 1934, from its vendors, secret rebates, allowances and brokerage fees amounting to $8,105,000 which were demanded by the company as a condition of purchasing from the vendors in question." Most of these rebates were obviously received outside of Louisiana, but the effect thereof was felt by its competitors in that state. The testimony of appellants' witness, Thomas, is to the effect that these chain stores, through hotchpotch contracts, purchase their insurance cheaper than their independent competitors. This advantage enjoyed by these chains in connection with their insurance costs, and also enjoyed by other large corporations, operates to the detriment of their competitors in Virginia as well as Louisiana, and this statute will measurably adjust the discrimination in this particular item of the cost of doing business.

Appellants also contend that this statute is arbitrary and capricious because it interferes with the freedom of contract. But this Court has already held in *O'Gorman & Young* v. *Hartford F. Ins. Co., supra,* that the regulation of the commissions to be paid agents of insurance companies does not infringe that liberty. In the recent case of *West Coast Hotel Company* v. *Parrish,* 300 U. S. at p. 391; 81 L. ed. at p. 708, in sustaining the power of the State of Washington to prescribe minimum wages for women and minors in industry, Mr. Chief Justice Hughes said:

> "* * * In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of free-

dom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of the law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." (81 L. ed. 708.)

The appellants further contend that the agents will do nothing to earn their part of the commission. But there is nothing except speculation and opinions of appellants' employees and New York brokers to substantiate this claim. The Virginia Association of Insurance Agents has taken the position that it is the duty of the resident Virginia agent who is associated with the nonresident broker to examine into the risk and satisfy himself as to the correctness of the rate and coverage embodied in the contract, before countersigning same; and that it is further his duty to render the same service in connection with the contract throughout its life as he would render if he alone negotiated it. Appellees' witness, Moore, enforcement officer of the Bureau of Insurance, testified that this Bureau expected similar services to be rendered the resident agent associated in these out of state contracts. Attention has already been directed heretofore to certain testimony of appellants' witnesses admitting the extent and value of the services customarily rendered by the resident agent in connection with casualty and surety

contracts, and to public addresses of insurance executives. The testimony of appellees' witnesses, four Virginia insurance agents, relating to the nature and extent of the services customarily rendered by them will now be considered in some detail.

The witness DeJarnette testified that in an automobile liability risk it is the custom of the resident agent to first study the classification and correctness of the rate applicable (R. 269). During the life of the policy the agent inspects the equipment, and also studies the conduct of the drivers in operating same, with a view to making suggestions to avoid accidents (R. 270). If it is a fleet automobile risk, certain credits apply to the rate applicable to cars more than five and, if there are more than ten cars, the assured is entitled to an experience rating after the fleet has been operated over a period of two years. This experience rating is promulgated by the Virginia automobile rating bureaus. The agent investigates the history of the risk and checks his information with the rates so promulgated (R. 270). During the life of the risk, the agent keeps a complete list of all claims reported and studies the accident frequency, with a view of advising the assured and suggesting preventive remedies (R. 270). When a loss is declared, the agent follows each stage of the adjustment closely, and, in most cases, makes out the report of the accident and turns it over to the claim adjuster and then follows it to its conclusion (R. 270). It is generally customary for the assured in case of a loss to contact the resident agent rather than the claim department of the insurance company (R. 271). The attitude of the agent with reference to controversies and disputes between insurer and insured, and in dealing with company

representatives, is to see that the policyholder obtains every right and benefit that the contract entitles him to, the agent considering it his duty to see that both the assured and the company are fairly treated—he regarding himself as an impartial representative of both parties (R. 271). The only compensation the agent receives for the services he renders during the life of a policy is the commission paid at the time the contract or policy is issued (R. 272).

In connection with a contract for workmen's compensation insurance, this witness testified that, before the contract is written, it is necessary for the agent to make a personal inspection of the plant, and also the payroll, so that the rate may be properly classified as to the various employees, the compensation risk being composed of different rates, depending upon the type of the work each employee is engaged in performing. When the agent has satisfied himself of these points, he then countersigns and delivers the contract (R. 272). He then advises the assured with reference to inspections by the insurance company's engineering department to determine if any additional safety appliances should be installed to prevent accidents, and when the engineering department reports the results of the inspection a copy is sent to the agent's office. Upon receiving the recommendations of the engineering department, the agent then discusses with the assured the question of whether or not the recommendations justify the necessary expenditure to carry them out. In some cases the agent works out with the engineering department improvements of their recommendations (R. 273). When an accident happens, the policyholder usually reports the matter to the agent, who in turn reports it to the company (R. 273). Whenever the agent feels that the assured should

have any service rendered by the engineering or inspection division, he calls the service department of the insurance company and requests same (R. 273-4).

This witness' company is not a party to this suit and the witness has customarily been associated with the non-resident broker in contracts negotiated outside the State, receiving half the commissions. In these cases it has been customary for him to examine and check every such contract and see that all the rates and forms are properly applicable to Virginia requirements, and, if not, to correct the same. He retains a copy of the contract for his files. He has been called on for service by the assured in such contracts in which he has been so associated (R. 274-5). During the life of the contract, the agent makes a continual study of the risk and suggests any change as to rates, forms, or privileges to which the assured is entitled but which may not have been applicable at the time the contract was issued, and he secures an endorsement from the insurer to conform to the changed conditions (R. 275). This witness stated that, in his opinion, the resident commission agents of Virginia throughout the state will, in conducting their business, perform the duties as set out in the resolution of the directors of the Virginia Association of Insurance Agents heretofore quoted (R. 278).

The witness Robert R. Boswell is a resident commission agent and has had extensive experience in the casualty and surety business. He testified that when a contract of insurance is on the books of a resident agency the service of the agency has only just begun, and that it is up to the agent to maintain a sufficient force to service whatever may happen under the contract during its life (R. 302).

In connection with contractors' bonds, the agent makes periodic visits to his assured to improve the loss ratio and points out any unusual hazards around their plants. He suggests safety ideas to the assured to reduce accidents. He sees to it that the safety engineer of the insurance company is on the job at the inception of the risk and keeps in close contact with the safety engineers to secure periodic visits and reports (R. 302-3). Prior to the writing of the contractor's bond, the agent satisfies himself that the contractor has not obligated himself to do more than he is financially able to do, that he is familiar with the type of work involved, and that he has the proper kind of equipment. He advises with him as to the employment of sub-contractors, and keeps well posted and informed as to who these sub-contractors are so that the most satisfactory sub-contractor will be available for the particular work at hand (R. 303-4). Where a foreign contractor has a public contract, such as a road construction job, the agent keeps in contact with the State Departments to the end that payments will be promptly made on the contract (R. 304-5).

The witness Roger E. Clarke is a resident insurance agent at Fredericksburg, Virginia, and in the past was the president, and a member of the board of directors and various standing committees of the Virginia Association of Insurance Agents. He testified that ever since he has been in the business it has been customary to divide equally the commissions on fire insurance business originating outside of the State (R. 328). As to the service it has been customary to render in connection with such fire policies, he testified that, when the agent is associated with the risk directly by the company, he conducts his investigation of same just as if he were the producing

agent. He makes an examination to determine the desirability of the risk and reports his recommendations with respect thereto. The agent then prepares the policy in accordance with the facts disclosed by his investigation, applies the proper rate, countersigns same, and transmits it to the company. Thereafter he holds himself in readiness to service the risk during the life of the policy. The assured is informed that the agent is associated with the nonresident producer to render such service as is appropriate, and that there is no increase in cost of the insurance to the owner of the property by reason thereof. He regards himself as an impartial representative of both the insurer and the assured (R. 329-330). His testimony with reference to the service customarily rendered by the agent in connection with workmen's compensation risks and automobile liability risks (R. 330-331) is substantially the same as that given by the witness DeJarnette heretofore referred to. He stated that the agent also makes investigation of the premises covered by a public liability policy and works in cooperation with the insurer's engineering department to eliminate hazards. The witness testified that the services he described as being customarily rendered in these three types of risks is somewhat typical of an agent's services in connection with the other various types of coverage involved in casualty insurance (R. 331). The agent consults with the Virginia Auto Administrative Bureau and the Virginia Insurance Rating Bureau with reference to the rates applicable to risks with which he is connected (R. 332). When loss occurs the agent follows the negotiations and settlements of claims from the inception to the conclusion, assists in the preparation of proofs of claim, advises the assured as to acts on his

part which might prejudice his rights, and generally sees that a settlement fair to all parties is arrived at (R. 332). The commission agent customarily regards it as his duty to protect the interests of the assured, whom he considers his client, and he is generally available to the assured for consultation and advice with respect to the interpretation of contracts, the assured's duties thereunder, or any other matters relating to the coverage (R. 333).

He further testified that it is his intention to comply with the provisions of the resolution of the insurance agents association outlining the duties of resident agents, and that it is his belief that the agents throughout the State will do likewise (R. 334).

This witness further stated that, in his opinion, a nonresident broker or agent is not in a position to render as satisfactory service to the assured or to the insurer in connection with local Virginia risks as the resident agent, unless said nonresident agent personally visits the State and familiarizes himself with the conditions pertaining to the risk, giving in detail his reasons therefor (R. 334).

The witness T. Garnett Tabb is one of the most successful and prominent commission insurance agents in Virginia and has been connected with the business for about forty-seven years. He testified that it is generally understood that a commission insurance agent recognizes his first duty to his policyholders as a matter of good policy, though he would not forget his allegiance to his company's interests. In cases of conflict between the interest of the two, the agent acts as arbitrator and frequently gets both parties together, preventing court action, and finally satisfying both parties as to the justice of the conclusion reached (R. 355). For at least twenty-five years it has been customary for the Virginia

resident commission agent to receive one-half of the producer's commissions on Virginia fire risk contracts originating outside of the State (R. 384). When such contracts are sent to the agent, he studies its provisions and determines whether the correct rate has been applied. He feels responsible for the correctness of any contract he countersigns. The agent sometimes inspects the risks in these fire insurance cases sent to him, if he entertains any doubt as to the correctness of the coverage or rates, and makes any suggestions which his inspection renders appropriate. As soon as the contract is in such form as to meet with his approval, the agent then countersigns it and either returns it to his home office or sends it direct to the broker from whom he received it, if it was sent by a broker (R. 357). During the life of such a policy, the agent would expect to respond to any request for service from the assured or its representatives, if a foreign corporation, and "he would expect to render to both his company and the insured just the same service, if it was needed" as he would render if a Virginia agent had negotiated the contract (R. 357). He testified that it has usually been the practice in such cases for the agent to write either the broker or the assured at the time he countersigns the policy, offering his services (R. 357).

In connection with casualty and surety risks, the witness testified that the first duty of the agent is to see that the policy is correctly written, and thereafter it is his duty to keep in close touch with the assured and look forward to rendering "super-service" to enable him to hold the business, and perhaps increase his business with that assured (R. 357-8).

In connection with fleet automobile liability risks, the agent sees that the rates applicable to the various terri-

tories where the cars are domiciled are correct and properly classified; he makes a more or less continuous study of the risk and its loss experience, and frequently has the investigation and claim departments of his insurance company call the drivers into consultation for safety measures. The agent himself often participates in these safety meetings (R. 358-9). He stated further that, in his opinion, actual contact by the agent with the physical conditions pertaining to a casualty risk is necessary to properly service same, and that the nonresident broker or agent living in New York or Chicago cannot possibly render as satisfactory service to the assured as the local Virginia agent (R. 359); that a personal contact with the operation of the industrial activity of an assured in order to properly perform a commission agent's service is most imperative (R. 359). The witness testified that he knew of no valid or substantial reason why a distinction should be made in the basis of the division of commissions between a nonresident agent or broker and a local resident commission agent in the casualty and surety lines and fire insurance line where a Virginia risk of either type is negotiated through a nonresident agent or broker (R. 361). The Travelers Insurance Company which he represents advertises nationally that it has thousands of agents ready to take over the responsibilities of the assureds promptly, no matter when or where an accident happens, and the local commission agents cheerfully render this service (R. 362). Prior to the 1938 Act, there was no established practice in Virginia with reference to the basis of division of commissions in cases where a Virginia resident agent was associated with a nonresident agent or broker in casualty and surety contracts, or in any line except the fire insurance line (R. 363).

This witness testified further that the resolution hereinbefore quoted, which was adopted by the directors of the Virginia Association of Insurance Agents, is in conformity with the practice which has heretofore prevailed in Virginia in connection with the fire insurance business, where the Virginia coverage contract has been negotiated by a nonresident broker and the contract has been forwarded to the agent by the insurance company, with the exception that in the past it has not been customary to contact the assured (R. 364-5). In the witness' opinion the outline of duties contained in the resolution to the effect that the agent should contact the assured in such cases "is simply a forward step in rendering more efficient service and making it a uniform practice" (R. 364-5). He stated in his opinion that an agent receiving one-half of the commissions "would consider himself morally obligated to render every possible service both to the assured, the broker and the company" and that the prospect of securing a renewal of the insurance would be an incentive to the performance of such service, as the Virginia commission agent and the nonresident broker will be jointly interested in servicing and retaining the business (R. 365). The witness stated that in his opinion 90% of the insurance business of the state written in Virginia is written by the members of the Virginia Association of Insurance Agents and its members will comply with the resolution (R. 365). This witness also stated the service customarily rendered in connection with interpretations of the contract for the assured and advice to him with respect to changes in conditions pertaining to risks are constantly occurring. It is customary for the agent to contact the rating authorities and confer with them regarding rate classifications, experience rat-

ings and other matters which enter into the premium cost. With reference to adjustments of claims, the witness contrasted the difference in viewpoint entertained by a company employee, such as a claim adjuster or a branch manager and that of a commission agent. With respect to countersigning a policy, the witness pointed out that whereas the countersignature by the company representative is generally regarded as a mere perfunctory act because it is, in effect, only "one more signature of the company assuring the policy," on the other hand, it is to the interest of the commission agent for his own profit in the future to be very particular about applying his signature to a contract without knowing it to be correct. For this reason, the commission agent feels that he is taking a responsibility when he affixes his signature thereto. This same incentive impels the agent to carefully service the contract during its life (R. 365-7).

This witness further stated that the records in the office of an insurance agent, with respect to insurance contracts countersigned, provide information from which the insurance department may accurately determine the volume of insurance written out of the State by the insurance companies, for use in ascertaining the correct amount of taxes properly payable thereon (R. 366-7). This, of course, is a service the agent may render directly to the State.

The testimony of these witnesses, which has been referred to and much of their testimony which it would unduly prolong this brief to review in greater detail, establishes beyond any doubt that the Virginia commission agent renders many valuable services which, in the nature of things, a nonresident broker cannot render, because he has no personal knowledge of the circum-

stances and conditions pertaining to the risk. There is no real dispute that Virginia agents do perform these services, but the appellants claim that the insurer's engineering and claims departments do similar work and this enables the New York broker to dispense with the services of the impartial agent at the locality of the risk. But the services of an employee of the insurer are of an essentially different character. The employee's actions are naturally influenced and dictated by his employer's interests. He views every act and recommendation from that standpoint, and not primarily to promote the interests of the assured. On the other hand, the commission agent, being dependent upon the goodwill of the assured for the retention of the business on his books, is motivated by this incentive to look out for the assured's interests. If the assured feels that his interests are not properly taken care of, he will place his business with another agent. He looks to the agent for satisfactory service and protection, not to the insurer, and the agent knows this. He, therefore, as a matter of self-protection, bends every effort to see that his client receives fair treatment from the insurer. He is on the ground, in close contact with developments, where he can see that this is done. He controls the placing of the business and if the insurer acts unfairly may transfer it to another company. The company knows this and is as anxious to please the agent as the agent is to please the assured. For this reason, any reasonable request which the agent makes of the company will be complied with.

And the companies themselves invariably emphasize the value of the local commission agent's services to the assured, and stress its importance as an argument to offset the cheaper cost of mutual policies. An illustration

of this is found in a quotation from a public address delivered by Mr. Lawrence E. Falls, Vice President of the American Insurance Company of Newark at a meeting of the New Jersey Association of Underwriters on March 9, 1939. This Insurance Company is under the same management and control as the Bankers Indemnity Insurance Company, one of the appellants in this suit. In the course of this address Mr. Falls said:

> "There are insurance companies which sell their policies directly to the insured, and employ no agents. Most such companies hold out to the insured that their plan of operation saves the insured the amount of the agent's commission, and, therefore, those companies advertise that they can sell as good indemnity at a premium cost less than that charged by companies represented by local agents. Of course they do not mention that *the assured will be deprived of the services of a local agent when the contract is prepared;* through the currency of the policy *as changes in the assured's business require changes in the* policy; and at the *time of a loss,* when the *home office of the insurance carrier* and the *location of the insured's business* may be *hundreds, or thousands, of miles apart.* Insureds who buy contracts of indemnity in companies *represented by local agents to whom a commission is paid,* are, in increasing numbers, becoming aware (and most of the large insured are already aware) that *the insured, and not the insurance company, pays the agency commission.* In view of these two truths alone (and I hold that they are truths), the right rate of commission, one which will permit our present system of insurance distribution to continue, and to be patronized by the preponderent majority of insurance buyers in this country must be that proportion of the premium which the agent convinces the assured that he, *the agent, earns by his*

service to the assured and to the insurance business.

"I know of one specific instance where the agent talked this matter over with the assured in plain English and with simple arithmetic. The premium was $6000. a year, and the agent's commission was 20 per cent, of which fact he informed the assured, and stated that he, the agent, was on the assured's payroll for $1200. a year—or $100. a month. When he first wrote the account, the premium for this same amount of indemnity was $8500. a year. Through periodic inspections of the plant, removal of unnecessary hazards and, therefore, improvement of the risk, the rate had been reduced to save the assured $2500. a year. *The agent reformed the policies* so often as the nature of the assured's business required their reformation, and the agent asked the assured point blank whether or not he was worth $100. a month to the assured as an employee. The assured said, 'Yes,' and *that account is not subject to attack by direct-writing companies, nor by mutual and reciprocal carriers, even though they pay alluring dividends.*"

What a remarkable difference there is in the opinions of the value of the local commission agent expressed by these insurance executives in public address to their associates and the attitude toward these agents taken by the appellants in this case. In public addresses they say *salaried employees of mutual companies* cannot possibly render services at all comparable to the *local commission agent*, while, in this record, they claim that *salaried employees of stock companies* do and can render this service to the assured as well or better than the *local agent*.

The appellants contend that residence of a commission agent in the state is an arbitrary and capricious thing upon which to predicate a statutory regulation. But the Supreme Court itself has approved regulations based

on such residence in the case of *La Tourette* v. *McMaster, supra,* in which was challenged the validity of a statute of South Carolina prohibiting the granting of an insurance broker's license to any person unless he was a resident of the state and had been a licensed insurance agent of the state two years. La Tourette was not a resident of the state, but a New York broker who evidently desired to solicit in the state the privilege of peddling South Carolina risks among New York insurers. He claimed he was being deprived of his rights as a citizen of the United States in violation of the Fourteenth Amendment. In reply to this Mr. Justice McKenna said:

> "This contention depends upon the character of the business of insurance, and it was decided in *German Alliance Ins. Co.* v. *Lewis,* 233 U. S. 389, 58 L. ed. 1011, L. R. A. 1915C, 1189, 34 Sup. Ct. Rep. 612, to be clothed with a public interest, and subject, therefore, to the regulating power of the state. And it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker is so engaged,—is an instrument of such consummation. The statute makes him the representative of the insured. He is also the representative of the insurer (*Hooper* v. *California,* 155 U. S. 648, 657, 39 L. ed. 297, 301, 5 Inters. Com. Rep. 610, 15 Sup. Ct. Rep. 207), and his fidelity to both may be the concern of the state to secure. As said by the supreme court of the state: 'It is important for the protection of the interests of the people of the state that the business should be in the hands of competent and trustworthy persons.' (104 S. C. 504, 89 S. E. 398.) *And we may say that this result can be more confidently and completely secured through resident brokers, they being immediately*

under the inspection of the commissioner of insurance. The motive of the statute, therefore, is benefit to insurer and insured, and the means it provides seems to be appropriate.

" 'But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or convinced of the wisdom of its existence.' It is enough if the legislation be passed in the exercise of a power of government and has relation to that power. *Rast* v. *Van Deman & L. Co.*, 240 U. S. 342, 365, 366, and cases cited; also *Bunting* v. *Oregon*, 243 U. S. 426, 437." (248 U. S. 467 8. Italics supplied.)

The South Carolina statute in the above case goes much further to retain state control of its insurance broker's business by confining its conduct solely to residents of the state than the statute here attacked.

But the last paragraph quoted above serves as a forcible reminder of the erroneous approach which the appellants have adopted to determine whether the Virginia statute is arbitrary and capricious or whether it is a reasonable exercise of the police power. Their attitude seems to be that the burden is on the State to prove facts which would sustain a recovery in an action on a *quantum meruit* by a resident agent for half the commissions on an insurance contract negotiated in New York, and they further seem to contend that the value of the agents' services on such *quantum meruit* should be restricted to a consideration of his acts in affixing a perfunctory countersignature to the contract and nothing more. They assert that since the statute does not require the resident agent to do anything except countersign that the court must conclusively assume that this is all that it was contemplated by the statute that he would do. But this

is an obvious *non sequitur*. Neither the General Assembly nor the State Corporation Commission, in fixing the percentage of the premium which is allocated to agents' commissions, has undertaken to prescribe the measure of the services the agent shall render in return therefor in connection with business he alone produces. Custom and the self-interest of the agent to retain his client's business may be relied on to take care of the amount of service he will render. It must be presumed that the legislature knew the customary functions of the impartial commission agent as well as the nature and extent of the services such an agent ordinarily renders, and contemplated that the resident agent associated with such a contract will render these customary services and that they would be commensurate with the compensation provided therefor. Certainly this Court will not assume that the General Assembly created what one of the New York broker witnesses termed a "gravy train" for the Virginia agent and upon this unwarranted assumption, declare the act unconstitutional. On the contrary, the rule is well settled that the Court will adopt that construction which will sustain the statute, not destroy it, and will not impute an intention to the legislative body to enact ridiculous legislation. *Stephenson* v. *Binford*, 287 U. S. 251, 277.

Appellants also contend, because the national corporations are at liberty to request the association with the New York broker of a Virginia resident agent if they so desire, that the fact they do not more frequently request such association in casualty and surety cases shows that the local agent's service is without value to them. But this argument leaves out of consideration that the association of the resident agent is inconsistent

with the practice of auctioning off the hotchpotch contract. In the price bid for such a contract is reflected the rebate which the broker yields out of his customary commission. The association of the resident agent requires payment to him for his services and this payment interferes with the broker's rebate of commissions, because he cannot rebate that which must be paid to the local agent. The effect of this is to increase the bid price and reduce the advantage in insurance costs which the national corporation enjoys over its independent Virginia competitor.

And right here lies one of the principal causes of opposition to this statute. It is no secret that the same banking and financial interests which control some of the national corporations also control some of these large insurance groups. The national corporations have thrived on secret rebates and other competitive advantages they have enjoyed over smaller locally owned competitors. Naturally they and their business allies resist to the uttermost any move which reduces this advantage or tends to adjust these competitive inequalities. Nor is the existence of this rebating evil, or efforts to overcome it, anything new. It formerly existed in connection with railroad and other public utility rebates until remedied by both state and federal legislation carrying severe penalties and punishment for such favoritisms. It was practiced in insurance contracts in Virginia until 1912, when it was found necessary to prohibit it and to prescribe heavy penalties for those engaging in the practice (Acts 1912, p. 547). These provisions of the Virginia statute are now being evaded and circumvented by the practice of making the contract outside the State and defying Virginia's jurisdiction and power to do anything about it.

It is inconceivable that the Constitution of the United States can be so construed as to deny to the State the power to prevent its licensees from exercising their license privileges in such a manner as to so flagrantly flout the State's laws.

The statute here attacked will effectually prevent rebating by nonresident brokers, as hereinbefore pointed out, and will measurably adjust the competitive inequalities between the Virginia agent and the nonresident broker as well as between the locally owned business and the national corporation.

Unless this State may by legislation regulate the making by its licensees of Virginia coverage insurance contracts outside the State, there is only one recourse for the State to take to prevent rebating and to protect its citizens against this unfair competition. She may confine the conduct of these lines of the Virginia insurance business to corporations. (See the quotation from *National Union F. Ins. Co.* v. *Wanberg, supra.*) In addition she may refuse to permit these foreign casualty and surety corporations from engaging in the insurance business in the State. Thus, in the recent case of *Atlantic Refining Company* v. *Virginia*, 302 U. S. 22, 26, which involved the validity of Virginia's entrance fee imposed on foreign corporations for the privilege of doing business in the State, the Supreme Court said:

> "* * * Whether the privilege shall be granted to a foreign corporation is a matter of state policy. Virginia might refuse to grant the privilege for any business, or might grant the privilege for some kinds of business and deny it to others. It might grant the privilege to all corporations with small capital while denying the privilege to those whose capital or resources are large. * * *" (302 U. S. 26).

The above case cites, with approval, the former decision of that court sustaining the validity of section 163 of the Virginia Constitution prohibiting foreign public service corporations from doing any intrastate business in Virginia; *Railway Express Agency* v. *Virginia*, 282 U. S. 440, 75 L. ed. 450.

And finally the state may, in order to insure regulatory control over her domestic insurance business, limit the *charter powers* of such domestic insurance companies so that the corporations will not have power to do business or *make insurance contracts outside the state. Ex parte Schollenberger*, 96 U. S. 369.

Therefore, what it is clearly within the power of the State to accomplish legitimately in this manner cannot be said to be arbitrary and capricious because the power is exercised in a different manner. In fact, it is a much more reasonable attitude for the State to permit foreign insurance companies to do business in the State upon condition that they will not make Virginia insurance contracts *anywhere* in violation of Virginia laws, than to exclude them altogether, and confine the business to domestic corporations.

Finally, in concluding the discussion with respect to appellants' contention that *the statute is arbitrary and capricious*, it is not inappropriate to repeat what has been heretofore quoted from *La Tourette* v. *McMaster, supra.*

> "'But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or convinced of the wisdom of its exercise.' It is enough if the legislation be passed in the exercise of a power of government and has relation to that power."

Furthermore, the court emphasized in the above case, in determining whether a statute violates rights under the fourteenth amendment, the difference between those statutes relating to ordinary occupations and those which are an exercise of the police power and undertake to regulate a business clothed with a public interest. The court said, with reference to the alleged violation of La Tourette's rights: "This contention depends upon the character of the business of insurance, and it was decided in *German Alliance Ins. Co.* v. *Lewis* * * * to be clothed with a public interest, and subject, therefore, to the regulating power of the state."

La Tourette had contended that the South Carolina statute, confining insurance brokers to residents of the state, had been passed solely in the interests of the local agents and brokers, and was therefore arbitrary. The court unanimously rejected that contention just as the similar contention of the appellants here should be rejected.

VI.

The Branch Manager Appellants Have no Standing in Court to Complain of the Statutory Regulation Requiring Insurance Companies to Make Insurance Contracts Through Regularly Constituted Virginia Resident Agents, Have Them Countersign the Policies, and Pay Them the Usual Producers Commission.

The challenged statute does not interfere with the performance by the branch manager appellants of any of the real duties pertaining to their office. It does not prevent them from signing contracts of insurance. It does not affect their compensation because under the well established practice in the insurance agency business they have never received, and are not permitted to re-

ceive, commissions. This was admitted by the Branch Manager Adair who said in the rare cases where he negotiates contracts he invariably turns the commission and the business over to one of the resident agents (R. pp. 234-5). The only change in his status is that the statute now requires the resident commission agent to countersign the policies, whereas he formerly did this. This same witness admitted that the countersigning was treated by the branch managers as a farce, that they never even examined the policy, unless through curiosity to learn of new practices, and that the countersigning was a "perfunctory matter." They did not even keep a record of the contract in their offices (R. pp. 209, 238-9, 252-3). These branch managers, therefore, having treated the statutory requirement and duty of countersigning as a joke, and having completely ignored the purposes for which it was imposed by law, now complain that the duty and responsibility have been transferred to resident agents who regard it as a serious obligation (R. 375-6). The branch manager received no additional compensation for countersigning, nor was any credit for the business given to his office. This went to the branch manager of the state where the business originated. The appellant Adair admitted that the only effect the challenged statute has on his duties and services, and the value thereof to his employer, is that it requires a commission agent to countersign the contract, and his signature is not sufficient to make the contract legally effective. He complains that his services are rendered less valuable because now the company has to pay someone else for the countersignature which he provided. But it is not the purpose of the statute to make the company pay merely for a countersignature. The purpose is to as-

sociate a commission resident agent with these transactions and to require a division with him of that part of the premium dedicated to the payment for the various services of a commission agent. The requirement that the commission agent countersign every such contract *is to insure that such an agent will be associated with the contract on a compensatory basis.* If he countersigns, he can then easily collect his compensation. The statute complained of is solely a regulation of the insurance companies prescribing the methods by which they shall transact business with commission agents and brokers, and how they shall be compensated for their services.

The branch manager, therefore, has no standing in court to complain of this regulation of the insurance companies they are employed by. It is not their compensation or duties which are affected but merely the division between agent and broker of the "producer's commission," none of which has ever gone to the Branch manager. A perfunctory countersigning is not a service, and never was a service when rendered by the branch manager.

These branch manager appellants are claiming that they have a constitutional right to perform this perfunctory act and thereby deprive the State of an effective means of enforcing compliance by the insurance companies with the requirements of the statute by having the countersigning done by the resident agent who is to be associated with the transaction and is to be compensated for his services therein. The mere statement of the proposition carries its own refutation.

It is clear, therefore, that the provision requiring the licensee insurance company to procure the countersignature of the commission agent to be associated with the

servicing of the contract is a regulation of the manner in which the insurance company must transact business under its license privilege, and is not a regulation of insurance agents. The branch managers cannot be heard to complain of the regulation of their employers.

VII.

The Statutory Classification of Agents and Employees of Stock Insurance Companies in Virginia is Not Arbitrary or Capricious, But is a Reasonable One.

The statute classifies commission agents, solicitors and nonresident brokers in an entirely separate class from salaried employees of insurance companies. The distinction between their customary and normal functions is obvious, as has been hereinbefore pointed out. The only effect this classification has upon the branch manager appellants in this case is to require their employers, the insurance companies, to have their Virginia coverage contracts signed by the impartial commission resident agent instead of by the company's employee who owes no obligation to anyone save his employer. One purpose of this, as has been shown, is to put it in the power of the resident agent to see that the provision of the act requiring him to be associated with the contract on a compensatory basis, *i.e.*, the payment of his commission, is complied with. But in addition thereto, there is another excellent reason why the requirement is correct and proper. Section 4222(c) of the Virginia Code prohibits both the agent and the insurance company from granting any rebate of premium to an assured, or any inducement not specified in the policy. The evidence is undisputed that the branch managers did not even examine the contract before countersigning to ascertain whether the rate was less than that fixed by law. Thus,

there might be an obvious rebate on the face of the policy. It is the duty of the agent to verify the correctness of the rate because if he countersigns a contract which carries a rebate he is himself punishable therefor under section 4223. The agent, therefore, owes the duty *to the state* to see that the rate is not *too low* while he owes *the assured* the duty to see that it is not *too high*. If he fails in his duty to the state, he is punishable by a fine of not less than $100.00, and this makes it very unlikely that he will treat it as a perfunctory matter or as a joke. He is under no duress from the insurance company in correcting an erroneous charge such as an employee would be. On the other hand, if he is fined for not correcting it he will have to stand the punishment himself, while the witness Tabb expressed the opinion that, if a branch manager should be fined for carrying out his employer's orders, *the company would stand it*. Mr. Tabb has been in the business nearly half a century and has had enough experience to form an intelligent opinion. But be that as it may, the branch manager has not taken the duty of countersigning at all seriously, and it should not longer be entrusted to him.

The statutes referred to impose a heavy responsibility on the resident commission agent to see to it that the insurance company does not violate the Virginia laws in the issuance of policies as well as in other transactions in relation thereto, for he is a participant in these transactions. The branch manager appellants certainly have no vested constitutional right to treat a serious legal obligation of this kind as a joke, as they have treated their countersigning duties.

The appellants contend that the provision preventing the Virginia commission agent from paying any part of

his commissions to an unlicensed nonresident broker is unconstitutional as undertaking to extend Virginia's regulatory powers over insurance brokers' actions in other states. But this provision is not a regulation of the nonresident broker, it is a regulation of the Virginia licensed resident agent. Section 4226a contains the following provision:

> "No regularly constituted and registered resident agent or agency for any insurance company shall sign or countersign any blank contract of insurance or surety; nor may such *resident agent* or agency allow or *pay to any agent not regularly commissioned and registered, or to any unlicensed non-resident insurance broker any portion of any commission which he receives or is entitled to receive*" (Virginia Code section 4226-a).

It will be observed that the agent cannot pay an *unlicensed Virginia agent* any part of his commission. Can any good reason be advanced why he should give preferential treatment to an *unlicensed nonresident broker?* Or, if he can pay part of his commission to such unlicensed broker why he cannot pay it as a rebate to a nonresident assured?

It is submitted there is no merit in either of the contentions above referred to.

Similar Statutes in Other States

The Virginia statute, requiring insurance companies licensed to do business in Virginia to make contracts of insurance or surety on persons or property in Virginia through regularly constituted and registered resident agents, is not unusual at all. Resident agent statutes, in

one form or another and with varying degrees of application, exist in all of the forty-eight states. It might be helpful to call attention to some of these enactments.

Appellants' witness Haas, the assistant attorney of the Association of Casualty and Surety Executives, testified that he had made a study of the laws of the respective states relating to resident agents, so far as such laws affected the casualty and surety business. He found that in the states of Louisiana, Mississippi and North Carolina there were statutes raising problems comparable to that of Virginia (R. 204-5). This witness also referred to somewhat similar situations resulting from statutes in Montana, Oklahoma, Rhode Island, South Dakota, Washington, Wisconsin and Wyoming.

To illustrate the operation of these resident agent laws, the Court's attention is called to the following additional insurance statutes, to indicate the nature of these statutes generally:

A South Carolina statute, section 7954 of the Code of Laws of 1932, was construed by her Attorney General as requiring countersignature by a resident commission agent and payment to him of full commissions.

In ALABAMA it is provided in Section 289:

> "To facilitate collection of premium taxes and fees for agents, all stock fire and casualty insurance companies doing business in this State shall issue all policies upon property or risks in this State through resident agents, duly licensed, who shall countersign all policies. Each agent shall collect and retain the usual commission paid by the insurers except that not over one half of such commission may be paid to a licensed non-resident agent or broker * * *."

There is also a revenue law in Alabama known as Schedule 160.15, as follows:

"To assure the validity and construction of contracts according to the laws of this state, and to facilitate the collection of privilege taxes and fees for agents, all fire, surety and casualty insurance companies doing business in this state shall execute all contracts upon property or risks in this state through resident agents, duly licensed, who shall execute or countersign all such contracts. No special agent shall execute or countersign contracts. Each agent shall collect and retain the usual commission paid by the insurer except that not over one half of such commission may be paid a licensed non-resident agent or broker * * *. Non-resident agents, and non-resident brokers must also be licensed and shall pay an annual license of $25.00, but shall not execute or countersign fire, surety, or casualty insurance contracts. Special agents, both resident and non-resident, shall also be licensed, but shall not execute or countersign fire, surety or casualty insurance contracts * * *."

In ARKANSAS, Section 345 (7957) provides:

"No fire, accident, steam boiler, employers' liability, surety or workmen's compensation or other casualty company, shall assume liability, either under direct policies or by reinsurance, in its line of this State, except by and through a duly authorized and commissioned resident agent in this State."

In CALIFORNIA, Section 801 states:

"Except as provided by this article, an admitted insurer shall not cause to be executed or renewed any contract of insurance covering subject matter

located in this State at the time of execution or renewal, except either (a) through a resident agent, or (b) after approval in writing by such an agent."

In COLORADO, Section 2510 (40) provides:

"It shall be unlawful for any foreign insurance company to make, write, place or cause to be made, written or placed in this state any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against, unless done through its duly and regularly appointed and authorized agent or agents, residents of this state * * *."

And Section 2535 (65) of the same Colorado law provides:

"No foreign fire or casualty insurance company doing business in this state shall make, write, place or cause to be made, written or placed any policy, duplicate policy or contract of insurance of any kind or character or any general or floating policy, upon persons or property resident, situated or located in this state; except after the said risk has been approved, in writing, by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies so issued and receive the full commission thereon when the premium is paid."

In CONNECTICUT, Section 4121 provides:

"No non-resident or foreign insurance company shall issue or deliver any policy or make any contract of insurance on either persons or property in this state, or covering any hazard or risk in the performance or non-performance of any duty relative to any

contract or obligation, performed or to be performed in this state, or in connection with any obligation or duty which is governed or controlled by the laws of this state, but actually to be performed by any individual, firm or corporation not resident in this state, unless such policy or contract is issued through and countersigned by a lawfully constituted and licensed resident agent of this state * * *."

In DELAWARE, it is provided in Section 588 (17):

"No foreign or alien insurance company, other than a life insurance company, shall make, write, place or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy upon property situated or located in this state, except after the said risk has been approved in writing by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies or contracts so issued, and who shall receive the full premium paid thereon and the state shall receive the taxes required by law to be paid on the premiums collected for insurance on all property located in this state."

In ILLINOIS, it is provided in Section 22 of the 1936 Act providing for the licensing of Insurance Agents:

"No policy of insurance or contract of fidelity and suretyship covering property or risks in this State shall be issued unless and until such policy or contract or the written application therefor shall have been countersigned by a duly licensed resident agent."

In INDIANA, Section 216 provides:

"Only agents who are residents of this state, or whose principal office for the conduct of such agency is maintained in this state, shall as agent, solicit, negotiate or effect contracts of insurance, or sign, countersign or issue any policy of insurance for or on behalf of any insurer, on any property, or insurable business activities or interests, located within, or transacted within this state."

In IOWA, Section 8943-e1 states:

"No insurance company admitted to do business in this State shall write, place or cause to be written or placed any policy or contract of insurance covering risks located or situated in this State, or any contract or indemnity or suretyship, except through or by a duly licensed agent of such company, residing within this State and licensed by the Commissioner of Insurance of this State."

In KANSAS, Section 40-246 provides:

"* * * To the end that the state may receive the full tax imposed by law upon the premium receipts of insurance companies, and to the end that proper supervision of the business may be vested in the State, it shall be unlawful for any fire, marine or fire and marine insurance company or casualty or surety company or association not incorporated under the laws of this State to make, write, place or cause to be made, written or placed any policy or contract of insurance of any kind or character or any indemnity agreement upon property or persons situated in this State unless the same is signed by a resident agent of this State regularly commissioned and licensed as such, who shall receive the usual and

customary commission thereon when the premium is paid."

In KENTUCKY, Section 762A-20 of Subdivision IX provides:

"No insurance company shall write, place or cause to be written or placed, any policy or contract for direct insurance upon any property in this Commonwealth, except through a duly licensed resident local agent in this Commonwealth; provided, however, the words duly licensed resident local agent, as used in this section, shall not be construed to mean or to include, in any sense, any State or special agent or travelling and/or salaried employee of any stock fire insurance company doing business in this Commonwealth * * *."

In MARYLAND, Section 65 provides:

"No company authorized to transact business in this State, and no person, resident or non-resident, shall write any policy of insurance, or assume any liability in the matter of insurance upon any property, real or personal, situated in this State, unless such policy, certificate or other evidence of liability assumed by said company or person shall have been, previous to delivery, signed or countersigned by an officer or agent, resident in this State, authorized by law to sign such policy or contract; provided, however, that policies issued to railway corporations insuring the rolling stock and other movable property of said road, and those insuring the liability of such railroads as common carriers, shall be subject to the requirement that they shall be signed by the resident agent in cases only where more than one-half the trackage of the roads operated by such railway companies is situated in the State of Maryland.

Every company or person, resident or non-resident, engaged in business in this State, shall pay to its legally licensed agent in the State of Maryland, for signing or countersigning any policy, certificate or other evidence of liability assumed by said company or person the same rate and amount of commission as if such policy, certificate or other evidence of liability, had been issued through said agent residing in the State of Maryland; and no agent shall sign or countersign any policy, certificate or other evidence of liability, upon any property situated in this State, for an amount less than the commission allowed on any policy, certificate or other evidence of liability issued through an agent residing in this State. The premiums on all policies so signed or countersigned shall be included in the report of gross premiums required to be made to the Insurance Commissioner by all companies not organized under the laws of this State."

In MASSACHUSETTS, Section 157 provides:

"Foreign companies admitted to do business in the Commonwealth shall make contracts of insurance upon lives, property or interests therein, and annuity or pure endowment contracts with residents thereof, only by lawfully constituted and licensed resident agents."

In NEW YORK, Section 69-a provides:

"No insurance company or insurer organized or existing under the laws of any other state or country shall issue or deliver any policy or make any contract of insurance * * * unless such policy or contract is issued through or countersigned by a lawfully constituted and licensed resident agent of this state * * *."

Section 142 of the New York law provides:

> "1. The term 'agent' in this section shall include an acknowledged agent or any person, partnership, association or corporation who shall in any manner aid in transacting the insurance business of any underwriter, incorporated or unincorporated, by negotiating for or placing risks or delivering policies or collecting premiums, but shall not include the officers and salaried employees of any such underwriter, who do not receive commissions."

Section 143 of the New York law deals at considerable length with the operation of brokers in that state. Paragraph 2 of that section provides:

> "No underwriter, authorized or permitted to do business in this state, or agent thereof, shall pay any money or commission or give or allow anything of value to any person, partnership, association or corporation not a duly authorized agent of such underwriter for or because of his or its negotiating a contract of insurance or placing a risk or taking out insurance or a surety bond, unless such person, partnership, association or corporation is authorized to act as a broker. No person * * * shall act as broker * * * without first procuring a certificate of authority so to act from the superintendent of insurance."

Paragraph 14 of the same section states:

> "If, by the existing or future laws of any other state, any broker resident within this state and duly licensed as such under the provisions of this section, may not be licensed as a broker in such other state, then no broker resident in such other state shall be licensed as a broker within this state, anything in

this section to the contrary notwithstanding. If * * * the amount of commissions which may be paid to such broker on premiums on risks located in any other state shall be limited under the laws of such state, then and in every such case, all brokers resident in such other state shall upon being licensed in this state pay a like fee in lieu of that prescribed by this section, and insurance companies which are authorized to transact business in this state shall not pay to any such non-resident broker any commissions on premiums on risks located in this state in excess of the commissions which the laws of such other state permit brokers of this state to receive on premiums on risks located in such other state."

The above statutes cited are illustrative of the variety of statutory provisions now in effect in all the states with reference to the operation of foreign insurance companies through licensed resident agents.

VIII.

This Case is not Controlled by Hartford Steam Boiler Inspection and Insurance Company v. Harrison[1]

Appellants' brief does not discuss this case (which will be referred to herein as the *Harrison case*), nor did appellant rely on same in the District Court. However, that Court thought the cases so similar that it requested the filing of briefs discussing the case and its effect, if any, on these Virginia statutes. The case will therefore be discussed here for the Court's use should it be deemed proper for consideration.

The *Harrison case* was instituted by a petition for mandamus filed by the Insurance Company and one of its salaried employees to compel the Georgia Insurance

[1] 301 U. S. 459, 81 L. ed. 1223.

Commissioner to issue said employee a license as an insurance agent for the writing of casualty insurance. The only reason the license was refused was because of the provisions of the Georgia statute prohibiting salaried employees of stock surety, casualty, or fire insurance companies from being licensed as insurance agents, but permitting salaried employees of mutual companies to be so licensed. The county court granted the mandamus, the Supreme Court of Georgia reversed, and this Court in turn reversed the latter.

The Georgia Statutes Involved

Section 56-508 of the Code of Georgia, as amended by an Act approved March 28, 1935, contained these provisions:

> "No licensed fire or casualty insurance company or company writing fidelity or surety bonds, shall write or issue any policy or indemnity contract on any risk in this State *except through a resident agent licensed by the Insurance Commissioner;* Provided that no contract bond shall be issued by any company, except through an agent, resident of the county in which the work under contract is located, if the company has an agent, resident in the county in question. The full commission thereon (meaning thereby the commission paid for the production of business by him), shall be paid to such resident agent. *Provided, however, that such resident agent may pay a commission on business placed with him by another duly licensed resident agent, and, provided further, that such resident agent may pay a commission not exceeding fifty per centum of the regular commission allowed resident agents upon the issuance of such policies or contracts, to a duly licensed non-resident on any business originated by such non-resident.* This section shall not apply to policies covering property in transit while

in the custody of any common carrier or to rolling stock of any common carrier, nor to cotton insurance issued under a per bale reporting form of coverage. *The words 'resident agent' as used in this section are deemed to mean resident agents engaged in the solicitation of such business from the public generally and shall not include any salaried employee of any insurance company doing business in this State; but shall include any agents of mutual insurance companies however compensated. * * *.*" (Italics supplied.)

The above italicized definition of "resident agent" prohibited any salaried employee of stock companies from engaging in the solicitation of surety, casualty or fire insurance contracts. At least this is the construction apparently given the Act by this Court.

THE VIRGINIA STATUTE DISTINGUISHED

The controlling distinction between the Georgia statute involved in the *Harrison case* and the Virginia statute here involved lies in the acts which they severally permitted salaried employees of stock companies to perform. It was the prohibition against the Georgia salaried agent of stock companies engaging in doing any of the acts of "agents engaged in the solicitation of such business from the public generally" which was held to be unreasonably and arbitrarily discriminatory. In other words, salaried stock agents could not engage "in the solicitation of such business from the public generally" because this function was restricted solely to, and was the test of what constituted, a "Resident Agent" in Georgia, and a "Resident Agent" could not be compensated by salary. The effect of this was obviously to wholly exclude the

branch manager or other salaried officer or employee of a stock company from the production field.

Now the Virginia statute is exactly the opposite in its provisions and in its effect. So far from excluding those on salaries from the production field, the statute (Sec. 4221-a) contains the following definition of them, which includes the appellant branch managers:

> "'State agent', 'special agent' or 'company representative' means any person, who *acts* in this State for or on behalf of any insurance company or other insurer, in the *solicitation, inspection or servicing* of risks assumed or to be assumed by said company; provided this definition shall not apply to life insurance companies, except the casualty branches of such companies." (Italics supplied.)

Thus the salaried stock special agent or employee may "act" for his company, (1) in the "solicitation," (2) in the "inspection," and (3) in the "servicing" of risks. These three activities cover the entire production field, so it is pertinent to inquire in what respect the stock company is restricted in Virginia from acting through such salaried agent or employee.

What the Virginia Stock Salaried Agent or Employee is Prohibited from Doing by the Virginia Statute

The only two functions which such an agent or employee may not perform are the following:

(1) He may not be paid any part of the "customary commissions" paid to commission agents,—generally known as the "producers' commission"—which is a factor in the premium rate of stock companies. Of course, there is nothing to prohibit the stock company from pay-

ing him commissions if it desires to do so, provided it pays the "producers' commission" to a "Resident Agent."

(2) While he may sign contracts for his company, he may not provide that requisite *"countersignature"* which must be furnished by a "Resident Agent" in order to make the contract legally effective.

In all other respects, the stock salaried agent or employee may do any act on behalf of his company in soliciting, servicing or inspecting risks which the salaried agent of the mutual company may do. *In fact, the only act which a Virginia mutual company may do through its salaried agent or employee which a stock company may NOT do is to have its contract validated by such an agent's or employee's countersignature.*

The Questions Involved in the Harrison Case

The opinion of the Supreme Court of Georgia, as well as the digest of appellants' brief in the Supreme Court of the United States, as reported in the Lawyer's Edition, show that the petition in the *Harrison case* challenged the Georgia statute upon the following grounds:

(1) That the statute was (to quote from the Georgia opinion, 187 S. E. 648, 650-51)

> "* * * violative of the Fourteenth Amendment to the Constitution of the United States, in that said provision is arbitrary, unreasonable, and capricious, and bears no reasonable relation to the public or to any other matter or thing within the police power of the state, and deprives the petitioners of their property and of their liberty, without due process of law; * * *"

(2) "* * * that said statute, in discriminating against stock companies and the agents thereof and

> in favor of mutual companies and the agents thereof, sets up an arbitrary and capricious classification bearing no reasonable relation to the subject-matter of the legislation, and no reasonable relation to the protection of the public, or any other matter within the legislative authority; * * *."

The majority opinion did not discuss the due process question, but the four dissenting justices were "of the opinion that its [the Supreme Court of Georgia's] decision was right and should be affirmed." It is not unreasonable to conclude that a majority of the court were unwilling to declare the statute unconstitutional on the ground that it violated the due process clause. In this connection it is significant that the Georgia statute contained a provision, similar to that in Virginia here challenged, requiring all the commissions to be paid to the resident agent and limiting such agent from paying more than fifty per cent thereof to a duly licensed nonresident agent or broker on business originated by such nonresident. This particular statutory provision, which with the countersignature requirement are the only complaints now being urged upon this court, did not seem to impress this Court as arbitrary, capricious or unreasonable or as denying due process. It was in no way adversely commented on or criticized by that court.

It was upon the second ground alone,—that the statute was unreasonably discriminatory and violated equal protection as between stock and mutual companies,—that this Court rested its decision.

What the Harrison Case Decided

The opinion is rested solely on the conclusion that, upon the record before the court in that case the majority

of the court could "discover no reasonable basis for permitting mutual insurance companies to act through salaried resident employees and exclude stock companies from the same privilege. If there were any such basis, it would have been discovered by the state courts." "* * * the appellant company had been licensed to do business in the State and was entitled to equal protection in conducting that business" (301 U. S. at p. 463). In other words, neither the *facts* contained in the record in that case nor *facts* existing in Georgia and within the judicial cognizance of the court supplied any sufficient reason for the distinction between the manner in which mutual and stock insurance companies were required to conduct their business in Georgia under the Georgia statute, which entirely excluded stock company salaried employees from the production field.

It appears from the opinion of the State Court (187 S. E. at p. 651) that no evidence was taken in the *Harrison case*, but that mandamus was awarded upon the pleadings alone, which consisted of the petition and the insurance commissioner's answer. The answer, so far as appears from the opinions of both courts, seems to have been barren of *factual* allegations, merely averring that there was a wide difference between mutual and stock companies. Nor does the opinion of the Georgia Supreme Court disclose any *facts* as to the customs and practices in Georgia relating to the insurance business, or which would tend to support the classification of mutual and stock companies so as to prohibit the latter from *soliciting business* through salaried branch managers or special agents. In fact, it is difficult for anyone to conceive of a sound basis for denying them this

privilege. Certainly, as has been pointed out, the Virginia statute contains no such prohibition.

The Supreme Court's opinion in the *Harrison case* seems to have viewed the Georgia statute as not only prohibiting the stock companies from *soliciting* through *salaried* agents and employees, but from doing *any other act* through them. The court said it could "discover no reasonable basis for permitting mutual insurance companies *to act* through salaried resident employees and exclude stock companies from the same privilege." Certainly there is no intimation in the opinion that the only function the salaried mutual agent could perform which the stock agent could *not* was restricted to *"countersigning"* contracts. Nor would there have been any foundation for any such intimation, because neither the word "sign" nor "countersign" appears in the statute or in the opinion of either court. If the classification of the acts permitted to be done through their salaried agents by stock and mutual companies, respectively, had been restricted by the Georgia Statute to this one act of countersigning, it is most probable that evidence would have been taken to prove facts to justify it, as was done here.

It is clear, therefore, that the decision in the *Harrison case* dealt with a question essentially different from that here involved and that it has no application to this case at all.

A. Whether the Statute is Unduly Discriminatory and Therefore Denies Equal Protection is a Factual Question.

A claim of denial of equal protection is necessarily based upon *facts*. The first questions which arise are: Equal protection from what? In what respect is the complainant being discriminated against? If there is discrimination, this alone does not constitute a denial of

equal protection, but it must be an unreasonable and arbitrary discrimination, so why is this discrimination unreasonable and arbitrary? In what respect and to what extent is the complainant injured? The answers to all these questions in this case involve facts relating to the respective customs and practices of the mutual and stock companies.

The *Harrison case* does not hold that the inherent differences between mutual and stock insurance companies, their customs and practices do not afford a basis for *any* distinctions or differences in regulating them. Obviously there must be differences. A regulation based upon a classification of salaried agents and commission agents of companies which employ both would be incongruous and meaningless if sought to be applied to a company which does not employ commission agents at all. A regulation as to the payment of the commission factor of a stock company insurance premium could not be applied at all to a mutual premium which has no commission factor in it to be paid to any one. A regulation prohibiting a stock insurance company from engaging in a practice it has never engaged in, and has no desire to engage in,—*e.g.*, paying commissions to its salaried employees,—cannot be either injurious to said company or unreasonable. A regulation as to the payment of the producers' commission factor of a premium, designed to remedy an evil of rebating part of the commission, would have little, if any, relation to a mutual company which pays commissions at such a small rate that the agent cannot afford to give any rebate.

A regulation, however, which excludes all salaried agents and employees from the insurance production field entirely, as in the *Harrison case*, could have application to all companies whether mutual or stock, and is

obviously very far reaching in its effect. When applied to stock companies only, it places the company in a position of complete dependence upon the good will and favors of the commission agent, who may represent several companies. Obviously, this should not be. But in Virginia the branch managers, special agents and other salaried company representatives may solicit business. When they solicit business it is usually in the capacity of assisting their commission agents and even if they negotiate contracts alone the invariable practice of the plaintiff companies has always been to close the contract through a commission agent and pay him the producers' commission, which is all that the Virginia statute requires (Op. R. 47).

And so, the decisions of this Court, in determining whether a statutory regulation is arbitrarily discriminatory and denies equal protection, invariably apply the *specific regulation involved* to the facts and circumstances as reflected in the existing customs and practices to which the regulation is applied.

The most recent decision as to the proper test for determining the constitutionality of state statutes classifying subjects of taxation or regulation is *Clark* v. *Paul Gray*, 306 U. S. 583. The case involved the validity of a California statute imposing a tax upon automobile caravans driven on the highways, one objection urged being a deprivation of equal protection because automobiles transported singly or in one zone, or caravans driven within one zone, were not taxed. This, it was contended, was an unreasonable and arbitrary classification, and denied equal protection. The case turned upon a question of fact,—whether automobile caravans were more dangerous or more destructive to the highways than those driven singly. This Court said:

"* * * It is true that the district court found that the practice of caravaning creates no additional traffic hazard, nor any undue wear and tear on the highways. But in this we think that its determination was not only contrary to the evidence, *but went beyond the judicial province.*

"It is no longer open to question that the states have constitutional authority to exact reasonable fees for the use of their highways by vehicles moving interstate, [citing authorities] and that for that purpose they may classify the vehicles according to the character of the traffic and the burden it imposes on the state by that use, and charge for the use a fee not shown to be unreasonable or excessive. [Citing authorities].

"The classification of the traffic for the purposes of regulation and fixing fees is a legislative, not a judicial, function. Its merits are not to be weighed in the judicial balance and the classification rejected merely because the *weight of the evidence* in court appears to favor a different standard. Cf. *Worcester County Trust Co.* v. *Riley*, 302 U. S. 292, 299, *The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility. Standard Oil Co.* v. *Marysville*, 279 U. S. 582, 584; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263; *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191, 192; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153, 154. Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. *Its function is only to determine whether it is possible to say that the legislative decision is without rational basis.* This is equally the case where the classification, which is one which the legislature was competent to make, is applied to

> vehicles using the state highways in interstate commerce. *South Carolina State Highway Dept.* v. *Barnwell Bros., supra.* The legislature must be assumed to have acted on information available to courts, and where, as here, the evidence, like that discussed in *Morf* v. *Bingaman*, 298 U. S. 407, *supra*, shows that it is at least a debatable question *whether the traffic in caravans involves special wear and tear of the highways and increased traffic hazards* requiring special police control, decision is for the legislature and not the courts. * * *" (Italics supplied. 306 U. S. at pp. 593-4).

The controlling factual question is stated in the language last above italicized: It is apparent from the foregoing quotation and the cases cited therein, that a claim of denial of equal protection is one to be determined solely by the *facts*, that there is a very strong, though rebuttable, presumption that the requisite facts do exist, and that the burden is on him who claims denial of equal protection to *both allege and prove the facts* which are relied on to sustain the claim that the statutory regulation is without rational basis and that he is injured thereby.

The necessity of the Court having before it the facts bearing upon a constitutional question of this nature in order to properly decide it is emphasized in the first decision in *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, which involved the question whether there was a rational basis for fixing the price of well advertised brands of milk at a higher price than brands not so advertised. The case was heard in the lower court on bill and answer, and the bill dismissed. The Supreme Court, in remanding the case for the taking of evidence and the finding of facts, said:

"* * * It is not a conclusive presumption, or a rule of law which makes legislative action invulnerable to constitutional assault. Nor is such an immunity achieved by treating any fanciful conjecture as enough to repel attack. When the classification made by the legislature is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary. * * *" (293 U. S. at p. 209).

After evidence had been taken pursuant to the Supreme Court's direction in the above case, and the District Court had made its findings of fact and dismissed the bill upon the merits, the case was again heard by the Supreme Court (297 U. S. 251). In affirming the dismissal, Mr. Justice Roberts, after an elaborate analysis of the facts, stated the legal principles applicable, and as they are peculiarly pertinent here they will be quoted for the convenience of the Court:

"We hold that the fixing of the differential in favor of the sellers of milk not having a well-advertised trade name, *in the situation exhibited by the findings*, does not deny the appellant equal protection.

"The argument is that the classification is arbitrary since the statute puts the appellant and other dealers who have well advertised trade names in a single class solely by reason of the fact that their legitimate advertising has brought them good will. So, it is said, they are penalized for their business skill and acumen. The answer seems sufficiently obvious. In enforcing its policy of price fixing,—a temporary expedient to redress an injurious economic

condition,—the legislature believed that a fixed minimum price by dealers to stores would not preserve the existing economic method of attaining equality of opportunity. That method was for the well-advertised dealers to rely on their advertising to obtain a given price, and for the independents to retain their share of the market, *not* by *counter-advertising* but by a slight *reduction of price*. The one expedient the law did not purport to touch; the other by fixing the same minimum for all dealers it would effectually destroy. In these circumstances, it was competent to the lawmakers to attempt, during the limited term of the legislative experiment, to preserve the *existing* relationship of advantage established by the *past trade practices* of the two groups. So to do, we must assume, was within the legislative power under the state constitution. No prohibition of the expedient is found in the federal Constitution, unless in the Fourteenth Amendment. We have held that article does not prevent the fixing of maximum and minimum prices for milk, *in the circumstances existing in the State of New York in 1933*. We now hold that to provide that a differential of one cent maintained by the independent dealers shall *continue* does not deny their advertised competitors equal protection. There was a plain reason for the classification. It was not merely that appellant had established a good will; it was that *there had resulted* a balance between that advantage and the resulting disadvantage to the unadvertised dealer,—a balance maintained by a price differential. To attempt the maintenance of that balance was to strive for equality of treatment, equality of burden, not to create inequality. *To adapt the law to the existing trade practice was neither unreasonable nor arbitrary.* The present case affords an excellent example of the difficulties and complexities which confront the legislator who essays to interfere in sweeping terms with the natural laws of trade or industry. The dan-

ger in such efforts always is that unintended dislocations will bring hardship to groups whose situation the broad rules fail to fit. Where, as here, there is recognition of an *existing status* and an attempt to equate the incidence of the statute *in accordance with it*, we find a compliance with, rather than a disregard of, the constitutional guaranty of equal protection. *The appellant cannot complain if, in fact, the discrimination embodied in the law is but a perpetuation of a classification created and existing by the action of the dealers.* In the light of the *facts* found the legislature might reasonably have thought trade conditions existed justifying the fixing of a differential. Judicial inquiry does not concern itself with the *accuracy* of the legislative finding, but *only* with the question whether it *so lacks any reasonable basis* as to be *arbitrary*. *Standard Oil Co.* v. *Marysville*, 279 U. S. 582, 586, 587, * * *; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. at pp. 261-3. Italics supplied.)

It is respectfully submitted, therefore, in conclusion on this point, that the question whether, in a case of this nature, the plaintiffs have been denied equal protection under the Fourteenth Amendment is a factual question, dependent upon whether the statute is appropriately adapted to existing insurance practices of the stock and mutual companies, respectively.

B. Factual Conditions in Virginia and Georgia are not Necessarily the Same

As heretofore pointed out the Virginia statute here attacked is essentially different from the Georgia statute involved in the *Harrison case*. But even if they were the same, an adjudication of the fact that insurance conditions and practices existing in Georgia in 1935 did not afford a rational basis for that state's classification of

mutual and stock insurance companies at that time in that state could not be considered an adjudication of the very different fact that conditions, customs and practices in Virginia, and in New York affecting Virginia, existing in 1939, are inadequate to provide a rational basis to support same. The decisions of this Court clearly show that a statute which, under facts and circumstances existing at one time, is deemed to be constitutional or unconstitutional, may be held the reverse at another time under changed conditions even in the same state. *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 68 L. ed. 841, and cases cited.

In the second *Borden Case, supra,* the Court, while holding that the facts proven were not sufficient to require a conclusion that the classification was without rational basis, nevertheless was careful to point out that the Borden Company had the right to have redress from the courts in the future "if there were proof that in practice it produces such gross inequality, and so unnecessarily damages the plaintiff as to shock the conscience." It is clear, therefore, that the question whether the appellants here are deprived of equal protection by the Virginia statute involves an essentially different factual situation in a different part of the United States, from that involved in the *Harrison case,* and that this Court cannot base its decision in this case upon the assumption that the factual conditions are the same in Virginia now as they were in Georgia in 1935. Obviously, a valid regulation governing the sale of ice or milk in Florida during the winter months might be grossly unreasonable and arbitrary in the State of Maine.

As stated, the adjudication of factual conditions in Georgia in the *Harrison case* cannot be said to constitute a decision, or even be authority for the proposition, that

the facts are the same now in Virginia; nor can said decision be an authority for the proposition that facts do not exist in Virginia now which afford a reasonable basis for the essentially different Virginia statute. The only similarity in the statutes is a superficial one.

C. The Facts Proved Justify Exempting Mutual Companies from the Virginia Statute

The only distinction drawn by the Virginia statutes between mutual and stock companies, their agents and employees is that the stock company must pay the commission factor of its premium to a commission agent and not to a salaried employee, and that the commission agent shall countersign the contract of insurance. Since, (with immaterial exceptions), mutual companies do not have commission agents, and do not have a commission factor in their premiums and do not pay any "customary commissions" to anyone, the statute would be meaningless if mutuals were included, unless the statute were extended to *require* mutuals to operate on an entirely different principle. The appellees do not believe the stock companies would desire any such requirement. They are vigorous in their arguments that the assured receives greater value for his money in a stock company policy than in a mutual, and the chief reason they give for this is the superior service rendered by the impartial commission agent. Thus, in the address of the Assistant General Manager of the Association of Casualty and Surety Executives, (quoted *supra*, pp. 32-4) we find the following:

> "'*The only medium through which this service can be rendered consistently is the agent in the field.* He is less the representative of the company whose

policies he places than he is the representative of the individual or company he insures. *The capital stock agent is not a salaried employee who must respond to the direction of any one company or group of companies.* He is a business man, doing business in his own local community. His first consideration must be his clients. *That means greater protection for the public than is possible in the case of the direct-writing mutual which operates through a salaried employee*'."

And in the address of the Vice-President of the American Insurance Company, (quoted *supra*, pp. 100-101), the speaker contrasted strongly the superior service rendered by commission agents over salaried solicitors and concluded with these words:

"'* * * and *that account is not subject to attack by direct-writing companies, nor by mutual and reciprocal carriers, even though they pay alluring dividends*'."

And just as *mutuals* do not pay *commissions*, so, on the other hand, *stock companies* do not pay *salaries* to their *commission* agents, or *commissions* to their *salaried* officers and employees.

This distinction in the customs and practices of mutuals and stock companies is fundamental. The commission agent has a much stronger incentive to produce business than a salaried employee, because the business, when produced, is his business and he expects to keep it on his books. There is a definite salable value in his prospects of renewals, and the stock company recognizes his ownership of it. On the other hand, the mutual salaried employee, if discharged, owns no interest in the business he has produced. It belongs to the mutual company.

This powerful incentive which the commission agent has to produce business, and the service he renders his client to retain it, no doubt furnish the reasons why the stock companies write many times as much business as the mutuals. The last thing the stock companies would wish would be a statute requiring mutuals to pay commissions and provide the same powerful motivating incentive to their agents. The mutual salaried solicitor sells at a smaller premium, it is true, but because of his lack of incentive produces less business and, the stock companies assert, renders less service to the assured.

This fundamental and basic distinction in the principles upon which mutual and stock companies operate is reflected in their premium rates. All stock company premiums include a factor to provide for the payment of commissions.

But the mutuals have no such factor in their rates. Their assureds do not buy or pay for the services of an impartial commission agent but they pay less for their insurance. There would be no point to applying this statute requiring countersignature by a commission agent to a mutual company which has no such agent and whose assured pays no such commission in his premium. On the other hand, the stock company assured does pay such commission in his premium and one of the purposes of the statute is to see to it that he gets the impartial service he pays for. An important part of this is rendered at the time of countersigning.

The opinion in the *Harrison case* emphasizes that it could "discover no reasonable basis for permitting mutual companies to act through salaried resident employees and exclude stock companies from the same privilege". The Virginia statute only excludes stock company salaried

employees from countersigning contracts and receiving commissions. It does not exclude the stock company from acting through them in any other respect.

And there is every good reason shown in this record why stock company salaried employees should do neither. As to receiving commissions, the appellants themselves have recognized and acted upon the sufficiency of the reason by adopting an invariable practice of refraining from paying them to their salaried officers and employees, as the appellants admit in their brief (p. 12). In addition, the commission factor of the premium is, by custom, dedicated to the payment for the services of an impartial agent, and it would be inconsistent and violative of good faith to pay it to a salaried employee of the insurer.

The question whether there is a reasonable basis for the requirement that resident commission agents must countersign contracts, as well as receive the commissions, has been fully discussed at pages 68-113, *supra*. There are discussed the harmful practices incident to hotchpotch contracts, rebating by New York brokers and by the stock insurance companies on contracts made outside of Virginia, and the unfair competition resulting therefrom in discrimination against Virginia agents and Virginia insurance companies, as well as against Virginia industrialists, merchants, property owners and business men generally. Also, is discussed the legitimate and proper purpose of the act to secure to assureds the benefit of the services of a local resident impartial agent. The basis which would support the reasonableness of the statute as against the appellant's challenge also would support it as against a charge of arbitrary and unreasonable discrimination, because the evils sought to be remedied are not found in the practices of the mutual companies. There are few, if any, mutual "groups," con-

taining parent, subsidiary and affiliated companies engaged in the separate lines of surety, casualty and fire insurance, and they do not combine these numerous types of risks in one hotchpotch contract. Mutual agents do not rebate commissions because they do not receive any. (While there is an immaterial exception to this last statement, in that two or three of the several thousand mutual companies do pay commissions, the commission is so small as not to permit effective rebating. See the dissenting opinion in the *Harrison case.*) Mutuals do not rebate premiums, they pay a dividend, and never discriminate as between their policyholders. In fact, as above pointed out, the testimony of appellants' New York broker witnesses indicates that the brokers do little, if any business with the mutuals. They present no field for the exercise of the broker's auctioneering talents. He cannot secure any rebates or reduced premium rates, hence there is no need for his services in negotiating contracts with mutuals. Again the mutual assured has no commission included in his policy and therefore does not pay for the services of a commission agent, so there would be no basis for a requirement that such an agent countersign or be associated with his contract, and there is no evidence that the two or three mutual companies who do pay commissions do not associate their Virginia commission agents with the contracts, if any, which they make outside of Virginia, or that such agents are not paid full commissions therefor.

Furthermore, there is no evidence of any need for a Virginia commission agent to countersign mutual policies in order to assist in policing the mutuals to prevent violation of premium rates fixed by Virginia law, whereas, the stock companies assert in their brief in this case that Virginia has nothing to do with rates they

charge for Virginia coverage contracts made outside the State. The chief evils sought to be remedied by this statute,—*i.e.*, rate cutting and rebating on Virginia coverage contracts negotiated outside the State, and securing to the assured the services of a Virginia impartial commission agent—are not found in the practices of the mutual companies. They do not indulge in rate cutting or rebating and their assureds do not pay for the services of an impartial commission agent; their insurance costs them less so they are not entitled to this service.

D. The Test of Reasonableness, from the Standpoint of Denial of Equal Protection, is Whether the Statute is Appropriately Adapted to the Existing Practices of Mutual and Stock Casualty Companies, Respectively.

The second *Borden's Milk case* (297 U. S. 251), as has been pointed out, involved the question whether a statute fixing the minimum price at which advertised brands of milk could be sold at one cent greater than brands not so advertised. The Borden Company, which advertised its milk, complained that this discrimination was unreasonable and denied it equal protection. But the evidence showed that it was customary for the non-advertisers to charge one cent less, and in view of this practice, the court said:

> "* * * The appellant cannot complain if, in fact, the discrimination embodied in the law is but a perpetuation of a classification created and existing by the action of the dealers. * * *." (297 U. S. 263.)
>
> "* * * To adapt the law to the existing trade practice was neither unreasonable nor arbitrary. * * *." (297 U. S. 262.)

Applying this principle to the Virginia statute, it is clear that its regulation harmonizes with and is nicely adjusted to actual existing practices. If the statute requiring payment of commissions and countersignature by a commission agent had been made applicable to mutuals, it would have completely disrupted their customary methods of doing business, because they do not pay commissions and have no commission agents who could countersign. On the other hand, the stock companies do have commission agents and do not pay commissions to their salaried employees. The requirements, therefore, are perfectly adapted to their practices. Nor are the appellant companies objecting to the prohibition against their paying commissions to their salaried employees. The only substantial objection they are making is to the requirement that commission agents must countersign their contracts and be paid commissions on contracts negotiated in New York and elsewhere outside of Virginia.

This question is one which was in no way involved in the *Harrison case*. No mention was even made of the practices of stock companies with respect to nonresident brokers, nor of the necessity of regulating such practices.

If this practice is to be regulated by the State there is no other effective manner in which it can be accomplished than by the requirement that the resident commission agent countersign and receive substantial compensation for his services as an associate agent. If the countersignature provision should be eliminated, there would remain no method by which the State could enforce its requirement for the association with such contracts of an impartial commission agent. The appellant companies have admittedly violated persistently the provisions of the

Virginia Insurance Commissioner's regulation prohibiting hotchpotch contracts, and the only possible means of enforcing this regulation, as well as preventing rate discriminations and rebates, is through the countersignature requirement. Not only is this requirement adapted to the customs and practices of the appellant companies, but it is the *only* method by which the desired purposes of the regulation can be effectually accomplished. Certainly, if this is the only means available, it cannot be said to be arbitrary or unreasonable.

E. The Appellants are not Harmed Because the State does not Require Mutual Companies to Compensate Their Agents on a Commission Basis.

In *Clark* v. *Paul Gray, supra,* this Court said the appellees in that case could not "take advantage of an alleged discrimination which, if it exists, does appellees no harm." In the case at bar the appellants make no claim that they are harmed by the failure of the statute to compel the mutual companies to change their existing basic principles of doing business through salaried agents and substitute therefor commission agents. As heretofore pointed out the appellants probably would not desire a statute so providing.

There was some suggestion in the testimony of one or two of appellants' employees that the requirement that the Virginia resident agent be paid one-half the producers' commission might result in brokers placing business with mutual companies but this was not borne out by the testimony of the broker witnesses themselves. They stated that they would not place their clients in mutual companies because the service they provided was unsatisfactory. Certainly there is no proof in the record that the appellants will suffer any substantial harm from

mutuals by reason of this statute. The same practice prescribed by the statute has been followed by stock fire insurance companies for many years, and the stock fire companies enjoy a larger share of the total volume of fire insurance business than the stock casualty companies do of the total casualty business.

As above mentioned the *Harrison case* is not authority for the proposition that mutual and stock insurance companies may not be separately classified for regulatory purposes, where there is a conceivably rational basis for the particular regulation enacted. On the contrary, the Supreme Court has held exactly the reverse. In *German Alliance Insurance Co.* v. *Lewis*, 233 U. S. 389, the statute of Kansas fixing premium rates was attacked as unconstitutional upon the ground that it exempted from its operation farmers' mutual insurance companies insuring only farm property. The court said:

> "The provision of the statute is, 'That nothing in this act shall affect farmers' mutual insurance companies, organized and doing business under the laws of this State, and insuring only farm property.' The distinction is therefore between cooperative insurance companies insuring a special kind of property and all other insurance companies. It is only with that distinction that we are now concerned. There are special provisions in the statutes of Kansas for the organization of cooperative companies, and if the statute under review discriminates between them the German Alliance Company cannot avail itself of the discrimination. A citation of cases is not necessary, nor for the general principle that a discrimination is valid if not arbitrary, and arbitrary in the legislative sense, that is, outside of that wide discretion which a legislature may exercise. A legislative classification may rest on nar-

> row distinctions. Legislation is addressed to evils as they may appear, and even degrees of evil may determine its exercise. *Ozan Lumber Co.* v. *Union County Nat. Bank*, 202 U. S. 623. There are certainly differences between stock companies, such as complainant is, and the mutual companies described in the bill, and a recognition of the differences we cannot say is outside of the constitutional power of the legislature. *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557."

See also in this connection *Supreme Council Royal Arcanum* v. *Behrend*, 247 U. S. 397, 399, and *United States* v. *Rock Royal Cooperative*, 307 U. S. 533.

F. The Bill of Complaint does not Raise the Question of Equal Protection

The appellant companies have not complained that they will suffer or be in any way damaged as a result of any discrimination against them in favor of mutual companies which would deprive them of the equal protection of the laws. It is well known that with one or two immaterial exceptions mutual companies do not pay commissions to their soliciting agents at all, but compensate them solely on a salary basis. The Virginia statutory provisions as to countersigning by a commission agent and paying him the commissions could not apply to mutual companies which have no commission agents unless their fundamental practice in this respect is to be completely changed by statute. Such a change would be a revolutionary one in the insurance business. On the other hand, the appellant companies do not pay commissions to their salaried branch managers, special agents or other employees. The undisputed customs and practices which control their respective methods of doing

business have clearly established this distinction between them. The appellant companies' premium rates contain a factor dedicated to the payment of commissions, the mutual rates do not. Stock companies do not negotiate contracts directly with an assured without paying to either a commission agent or a broker the producer's commission embraced in the premium (Op. R. 47).

Therefore, as to business *produced in Virginia,* the appellant companies only complaint of the statute is that they may occasionally be inconvenienced by their branch managers or other employees not being permitted to countersign contracts. As to this domestic business there is no complaint that this will add to the commissions appellant companies have been accustomed to pay Virginia resident commission agents. They admit they have invariably paid all commissions to such commission agents. These commission agents, for licensing purposes, are designated "Resident Agents," but the branch managers, Special Agents and Company Employees are all entitled to be licensed and to solicit business and perform every other function of a "Resident Agent" except countersign policies. The only act a mutual agent may do for his company which a branch manager or special agent of a stock company may not do for his company is countersign contracts.

While the existence of the above facts is shown beyond dispute in the record, the evidence showing them was not adduced in support of any issue relating to equal protection against mutuals. The complaint raises no such issue of fact. On the contrary, the complaint expressly states that the appellant *companies* do not even claim they have been denied equal protection of the law. They admit they have not. The last sentence of paragraph 9 of the Complaint is as follows:

> "The plaintiffs do not claim that any provision of the said 1938 Act violates the rights of the *company* plaintiffs *because of denying them the equal protection of the laws,* nor that any provision thereof violates the rights of the *agent* plaintiffs because of such denial except for the reason as shown in paragraph (11) hereinafter." (Complaint, p. 14. Italics supplied.)

This allegation is clearly one of fact, and, in substance, is that, *as a matter of fact,* the distinction in the statute between the countersigning authority of mutual agents and employees and stock company agents and employees does not hurt the appellants and does not deprive either the branch manager or company appellants of equal protection.

The only claim the *branch manager* appellants make in their complaint as to denial of equal protection is based upon an alleged discrimination between them and the *commission agents of stock companies* in that the branch managers are not permitted to provide the requisite countersignature while the resident agent may. The last sentence of paragraph 11 of the Complaint is as follows:

> "* * * The regulation and limitation having the effects as stated in sub-paragraph (a) of paragraph (8) is void whether undue, unreasonable, and arbitrary, or otherwise, because not bearing equally upon the agent plaintiffs and registered resident agents." (Complaint, p. 17).

This allegation applies to the *branch manager* appellants only, because the above quoted allegation from the last sentence of paragraph 9 completely eliminates the *company* appellants from the allegation with respect to

equal protection and renders it applicable *only* to the *branch managers*. The regulation referred to above in sub-paragraph (a) of paragraph (8) relates only to the countersigning provision. There was no question of discrimination between commission agents and salaried employees of *stock companies* decided in the *Harrison case*.

It is elementary that the appellees are not required to either answer or introduce evidence bearing upon a factual issue *not raised by the complaint*. *A fortiori* is this true where the complaint expressly *admits* that no company appellants are damaged or hurt by any lack of equal protection *as against mutuals, their agents and employees*. As above pointed out, the *Harrison case* is not decisive of the existence or non-existence of facts in Virginia which would show the reasonableness of Virginia's classification of stock and mutual agents, because the statutes are essentially different and the facts before the court are different. Certainly there are many relevant facts in this record which were not presented to or considered by any of the courts in the *Harrison case*. None of the evils incident to rebating by New York brokers, rate violations through hotchpotch contracts, preferential rates accorded New York brokers by stock companies in experience rating, nor the perfunctory manner in which the branch managers in Virginia have discharged their countersigning duties were suggested to the courts or considered by them in the *Harrison case*.

In fact, no countersignature provision was even mentioned. The question presented on the record in that case is not even similar to that arising from the facts here, and even if these company appellants had not admitted in their pleadings that they were not hurt or damaged by any want of equal protection because of discrimina-

tion in favor of mutuals, and even if they had expressly claimed same, the *Harrison case* would not be even a persuasive authority in support of such a position.

Furthermore, even if this Court should be of opinion that the appellant companies will be damaged by the failure to require mutuals to have their policies countersigned by resident commission agents, it would be clearly beyond the province of the court to inject into the case an entirely new question, one not only not embraced in, but expressly eliminated from the case by the allegations of the Bill of Complaint. As said in the case of *The Fair* v. *Kohler*, 228 U. S. at p. 25:

> "Of course, the party who brings a suit is master to decide what law he will rely upon, and therefore does determine whether he will bring a 'suit arising under' the patent or other law of the United States * * *."

The appellants here have decided in their complaint not to bring this suit under the Equal Protection clause of the Federal Constitution. The evidence has been taken by both appellants and appellees only with relation to the matters complained of to the court. To decide the case on any other ground of attack, involving factual questions, would be to decide an entirely different case from that presented by the complaint, answer and evidence.

CONCLUSION OF PART I.

It necessarily follows from the evidence in this case, and the legal principles established by the decisions of this Court hereinabove cited, that the making of a Virginia coverage insurance contract by a nonresident foreign corporation, licensed to do an insurance business in

Virginia, is an exercise of the privilege granted by his license, and that Virginia has jurisdiction to regulate the doing of all acts in Virginia pursuant to said contract; that Virginia may revoke or suspend any such license or impose a fine upon the licensee for exercising the granted privilege in such manner as to violate her laws, either in the making or in the performance of said contract; that the statutory regulation here under attack is intended to and will remedy, in whole or in part, and discourage the evil practices of rebating of rates by insurance company licensees and the rebating by New York brokers of their commissions to assureds with the active connivance and assistance of said licensees, as well as adjust the unequal and unfair competitive advantages enjoyed by nonresident brokers over Virginia resident insurance agents, by foreign group insurance companies under hotchpotch contracts over domestic insurance companies which have no group affiliations, and by large national corporations in their reduced insurance costs over locally owned independent businesses and industries, and that said statutes are not unduly discriminatory but are reasonable and well adapted to the purposes sought to be accomplished.

PART II.

Reply to Appellants' Brief

APPELLANTS' THEORY OF "QUESTIONS PRESENTED"

Appellants divide the questions presented, as they conceive them, into three statements (Appellants' brief, 3-4).

The statement of the first question is predicated upon a legal interpretation of the challenged statutes contrary to that placed on them by appellees, who are the officers of the State charged with their enforcement. Appel-

lants state that the statutes have the effect of "prohibiting the corporate appellants from making such a contract in a state other than Virginia." This interpretation appellees have shown to be erroneous, *supra,* pp. 25-6.

Appellants' statement of the second question recognizes that they may lawfully make insurance contracts outside of Virginia if countersigned by a resident Virginia agent, and he is paid the required commissions, and appears to be a correct statement of the question.

Appellants' statement of the third question presented may also be accepted.

APPELLANTS' STATEMENT OF "THE PURPOSE OF THE STATUTE"

Appellants contend that the sole motive of the statute was to "save for Virginia local agents commissions justly theirs," and to "get them what they wanted." This may have been the chief purpose dominating the agents in advocating the legislation, but this Court has consistently refused to consider motives attributed to a legislative body by parties litigant. The purposes of the statutes have been fully discussed, *supra,* p. 69, *et seq.*

APPELLANTS' STATEMENT OF "THE FACTS"

Appellants contend in their brief (p. 7) that the producer may place contracts with a mutual company not within the statute. But there is no incentive so to do, because mutuals, with immaterial exceptions, do not pay commissions (Op. R. 65). Appellants' witness Nichols, a New York branch manager, knew of only one large mutual paying same (R. 123), and, even in the exceptional cases where commissions are paid by mutuals, the appellants' broker witnesses testified that because of poor service rendered by them or for other reasons they will

not place contracts with them (R. 811-2, 877-8). It is a matter of common knowledge that the rate of commissions paid by the few mutual companies which pay any at all, is so much smaller than that paid by the stock companies that the brokers would not profit by placing their business with them.

At page 14 of the appellants' brief, it is said that a local resident agent is never associated with the writing of casualty and surety contracts. This is contradicted by two of appellants' witnesses, Izard (R. 632) and Yancey (R. 680-1), Virginia agents, who testified they were frequently associated with brokers in such contracts.

Appellants state in their brief (p. 15) that the New York brokers will not render the same service for half their present commissions and therefore the company will have to pay them the amount of the half received by the Virginia agent. But this leaves out of consideration the fact that the service the Virginia agent will render will make it unnecessary for the broker to give the same service as in the past. The compensation is divided and the work will be likewise divided.

Appellants complain (brief, p. 16) that the statute imposes no obligation on the Virginia agent to render any service in contracts produced outside the State. Neither does the statute expressly impose any such obligation with respect to contracts negotiated within the State. The same identical provision applies to them all, and the appellees have construed the statute as imposing on the agent the same duties with respect to contracts produced outside the State that custom has imposed on him in cases where he himself negotiates the contract. The Virginia agents have likewise construed the statute. (See discussion, *supra*, p. 89, *et seq.*)

Appellants' argument with respect to the facts is apparently predicated upon the theory that the burden rests on the State to prove that the resident agents will render services commensurate with the compensation they will receive. But the appellants challenge the constitutionality of the statute on the ground that it is arbitrary or capricious and the burden is on the challenger to rebut this presumption *by proving that no conceivable fact or state of facts exist* which can possibly constitute a permissible basis for the legislation. *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209, 79 L. ed. 288. The appellants' argument on the factual question is restricted solely to the one thought, that the *only conceivable purpose* of requiring impartial resident agents to countersign the contract and be paid half the commissions is to unjustly enrich the agents at the appellants' expense. They do not even consider whether it might not be a legitimate purpose of the legislation to prevent rebates and rates discrimination; to adjust competitive inequalities and unfair competition between Virginia agents and nonresident brokers, or between the independently owned small Virginia merchant, industrialist or business man, and his competing national corporation, or between the Virginia fire insurance company or casualty or surety company, and foreign affiliated groups writing one hotchpotch contract combining all these coverages in disregard of premium rates fixed by Virginia law. Nor do they consider the existence of a *conceivable state of facts* under which the independent impartial agent might be utilized by the State as a watchdog or policeman over the insurance companies to prevent them from making, in or outside Virginia, hotchpotch contracts or from violating Virginia rate and rebate laws, or other legal requirements. In 1921, eighteen years ago, a regulation

was issued by the Virginia Commissioner of Insurance, which was intended to prohibit insurance company licensees from making these hotchpotch contracts. It contained this provision:

> "All forms of insurance against loss or damage on persons and property located within the boundaries of the State of Virginia shall be issued under a policy which shall be separate and distinct from all insurance which covers persons and property located in any other State. All insurance, whether excess, floater, blanket, general (reporting) cover, schedule, group or any form which has for its object the insurance of risks in the State of Virginia in connection with risks in other States, shall be held to be included under this rule" (R. 543).

The Insurance Commissioner evidently was aware of the evils attending these practices which still prevail in spite of his efforts to prevent them. A few days later he promulgated another interpretative ruling, in which was emphasized the necessity for countersignature by a Virginia resident agent and the payment to him of his usual commission. The ruling stated further, however, that it was permissible for a *salaried resident agent*, licensed by the bureau, to provide the required countersignature. This fact,—that the salaried agent could countersign,—doubtless accounts for the insurance companies having completely ignored the regulation. The resident commission agent would hardly have dared risk the revocation of his license by so flagrantly violating the ruling of the bureau as to countersign hotchpotch contracts, or parts thereof.

But, as stated, the appellants have completely ignored the conceivable existence of a state of facts which would

justify the enactment of the challenged legislation other than the one fact (and this is really not a fact but a speculation as to future action of agents) that the agents will not or may not render services to the insurer and the assured commensurate with the compensation he will receive, and that it is not desirable that they should render same. That this omission to prove the non-existence of such other facts, or states of facts, is fatal to their case, is conclusively established by the Supreme Court's decision in the case of *Pacific States Box and Basket Co.* v. *White*, 296 U. S. 176, 80 L. ed. 138. The Oregon Department of Agriculture had promulgated a regulation prescribing certain types of containers for the marketing of strawberries and raspberries. The plaintiff box company sought an injunction from the Federal District Court against the enforcement of the regulation on the ground that it was arbitrary and unreasonable and granted a monopoly to manufacturers of other types of containers. The case was heard on a motion for a preliminary injunction and the defendants' motion to dismiss the bill. This raised directly the question of the sufficiency of the allegations of the bill to negative the existence of any state of facts which would render the legislation proper. On this question the court said:

> "Plaintiff contends that since the case was heard on motion to dismiss the bill, all allegations therein made must be accepted as true; and, among others, the charge that 'there is no necessity for the particular orders relating to strawberries or raspberries' 'based on considerations of public health, or to prevent fraud or deception, or any other legitimate use of the police power, and the particular container described * * * does not of necessity promote, pro-

tect, further or develop the horticultural interests of the State;' and that its necessary effect is 'to grant a monopoly to manufacturers of the so-called hallocks.' The order here in question deals with a subject clearly within the scope of the police power. See *Turner* v. *Maryland*, 107 U. S. 38, 27 L. ed. 370, 2 S. Ct. 44. *When such legislative action 'is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts*, and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary.' *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209. * * * *The burden is not sustained by making allegations which are merely the general conclusions of law or fact.* See *Public Serv. Commission* v. *Great Northern Utilities Co.*, 289 U. S. 130, 136, 137 * * *. *Facts* relied upon to rebut the presumption of constitutionality *must be specifically set forth.* See *Aetna Ins. Co.* v. *Hyde*, 275 U. S. 440 * * *; *O'Gorman & Young* v. *Hartford F. Ins. Co.*, 282 U. S. 251 * * *; *Hegeman Farms Corp.* v. *Baldwin*, 293 U. S. 163. A motion to dismiss, like a demurrer, admits only facts well pleaded. Compare *St. Louis, K. & S. E. R. Co.* v. *United States*, 267 U. S. 346, 349" (296 U. S. 176. Italics supplied).

And in *Clark* v. *Paul Gray*, 306 U. S. 583, 594, this Court said:

"* * * Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to deter-

mine whether it is possible to say that the legislative decision is without rational basis * * *."

It is clear, therefore, that the appellants must *allege* in their bill and *prove all facts* necessary to *exclude the existence* of other *conceivable* facts or states of facts which would furnish a permissible ground for the legislation attacked.

Turning then to the complaint, it is pertinent to ascertain *what facts are alleged* which exclude the existence of any other *conceivable facts* which would sustain the legislation. Concisely stated, the complaint alleges the status of the branch manager appellants as "salaried agents" of the appellant companies, that prior to the present statute they were permitted by law to countersign policies; that the challenged statute now prohibits them from so doing, but requires this to be done by resident *commission* agents; that it requires said commission agents to be paid their customary commissions and to retain half of same, permitting the other half to be paid only to such nonresident brokers as are licensed in Virginia. The complaint then goes on to allege the injuries which the appellant companies and branch managers will sustain as a result of being required to pay commissions to Virginia agents on business negotiated outside the state, and that said injuries are in violation of their constitutional rights. The specific manner in which the appellants will suffer these various injuries is set out in detail in paragraphs 8 and 10 of the complaint.

The complaint alleges violation of due process in the application of the statute to contracts entirely negotiated and made outside the state, and these allegations are sufficient to properly raise the question of the *jurisdiction*

of the state to regulate the making or the performance of such contracts.

In addition to the question of the State's *jurisdiction*, the bill alleges a violation of the equal rights and protection of the *branch managers* in that the statute allegedly *discriminates arbitrarily* in favor of the commission agents in conferring on them the exclusive privilege of countersigning policies and contracts. The only facts alleged to support this claim of arbitrary discrimination are contained in paragraph 11 of the complaint.

Also, in addition to the question of the State's jurisdiction, the *company* appellants allege in the complaint that the provisions of the statute detailed in paragraphs 8 and 10, and allegedly injuring them as therein set out are "undue, unreasonable, arbitrary and void." The same facts as are alleged to support the branch managers' claim of *discrimination* are likewise alleged to support this claim of the companies that the statute is *arbitrary*, and are contained in paragraph 11. Since this paragraph contains all the allegations of facts contained in the bill upon which to base the charge of arbitrariness or of discrimination between branch managers and commission agents, for the convenience of the Court it is quoted here in full:

> "Each said regulation of the actions of any of the plaintiffs and each said limitation imposed upon the conduct of any of them in the exercise of a right to work and labor, or a right to conduct a business, by means of the said 1938 Act mentioned above, and by means of one or more provisions thereof, having an effect as stated in paragraph (8) above, is undue, unreasonable, arbitrary and void. Each of said provisions is designed exclusively to promote the interests of the general body of the Virginia stock fire,

casualty, and surety agents who are not registered company representatives of companies, with the view to unjustly enrich them at the expense of those who are so registered (by lessening the value of their services) at the expense of the companies (by increasing their operating costs and causing them losses of business) at the expense of the insuring public (by increasing the cost of insurance) and at the expense of the Commonwealth of Virginia, (by causing loss of the taxes on premiums on contracts covering in Virginia but produced outside of Virginia which will be placed in non-admitted companies). The unreasonable prohibition against the agent plaintiffs countersigning contracts, although they are in every respect qualified and entitled so to do is intended only to compel the company plaintiffs to secure countersignatures of their contracts covering in Virginia though produced outside of Virginia, from the Virginia registered resident agents. The unreasonable regulations of the furnishing of such countersignatures on such contracts are intended only to secure to them the payment of grossly excessive amounts of compensation therefor. The regulation and limitation having the effects as stated in sub-paragraph (a) of paragraph (8) is void whether undue, unreasonable and arbitrary, or otherwise, because not bearing equally upon the agent plaintiffs and registered resident agents."

It is quite obvious that these are not allegations of *fact* at all, but only of improper legislative *motives*. But the motive of the General Assembly in adopting this act may not be inquired into by the court.

"The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or mo-

tive has caused the power to be exerted. As we have previously said: from the beginning no case can be found announcing such a doctrine and, on the contrary, the doctrine of a number of cases is inconsistent with its existence."

McCray v. *United States*, 195 U. S. 27, 55, 56, 49 L. ed. 78.

See also *Arizona* v. *California*, 283 U. S. 423, 455, and cases cited therein.

But even if considered as intended to allege facts, the allegations are not of *basic facts*, but of *conclusions of fact*, without any allegations of the existence of underlying facts to justify the conclusions alleged.

Under the rule laid down in *Pacific States Box and Basket Co.* v. *White* (quoted from, *supra*), these are not such allegations of fact as would operate to exclude the existence of other facts or another state of facts which would sustain the legislation, and which are presumed to exist.

If, therefore, this case were being heard solely on a motion to dismiss the complaint, which is as on a demurrer, there would be no proper allegations of fact before the court to sustain the charges that the legislation is arbitrary. The court could consider as to this, only such facts as are within the range of *judicial notice*.

However, in order to obviate the possibility that the court might judicially know facts which, standing alone, might lead to the conclusions appellants alleged, the appellees filed their answer. In paragraph 17 they alleged the interpretation which, as enforcing officers of the state, they placed upon the statutory provisions relating to the classification of commission agents and employees of insurance companies, as well as the general functions

of such agents and employees within their respective classifications. The answer (paragraph 17-d) sets out at some length the services which a commission resident agent customarily renders in connection with a contract he negotiates while paragraph 16-b alleges that the appellees construe the statute as imposing on the countersigning agent who is associated by the statute with a contract entirely negotiated outside the state "the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to an insurance company in connection therewith, as customarily apply in cases where the 'Resident Agent' himself negotiates a similar contract."

The fact of this interpretation by the appellees was proven by the witness Moore (R. 525-6), while the facts alleged as to services customarily rendered by commission agents was proven by the testimony referred to in Part I of this brief. In fact there was no contradiction in the testimony that the agent customarily renders services in the manner and of the kind alleged in paragraph 17-d of the answer.

The appellants in their depositions taken in chief sought to prove that the New York broker and the appellant companies' engineering and claim departments in Virginia render all the service necessary in connection with all contracts the broker negotiates and that there is no reason for the Virginia agent to render any service. This was evidently upon the theory that the statute, as construed and sought to be enforced by appellees, imposed the duty on the commission resident agent to render these services in connection with such contracts, but that this was arbitrary because there was no reason to require same.

In rebuttal the appellees introduced testimony to prove that the Virginia Association of Insurance Agents had taken the view that the agent *should* render the service, and also evidence to prove that the agents of the state will render same; that such service is desirable; that the custom of associating resident commission agents in out of the state produced contracts on a basis of equal division of the commission has prevailed for many years in the fire insurance business, and that in such cases these agents have customarily rendered such services.

Upon these two questions of fact—the desirability of and the probable rendition of these services—the great bulk of the testimony was taken. The appellants now assume that if the court should be of opinion that there is no desirability of such services and no probability that they will be rendered, then *there is no other factual basis upon which the legislation can be sustained.* But this necessarily assumes also that *the court cannot conceive* of any *other facts or state of facts* which would furnish a legitimate purpose for the legislation. The court, however, does not have to exercise any imagination in this case to conceive such other facts. Appellants contend that Virginia has no jurisdiction to say what kind of Virginia coverage contract the appellant companies make outside of Virginia, and no jurisdiction to require that rates fixed by Virginia law shall be adhered to in such contracts, and they even admitted in their brief filed in the District Court that these companies have never complied with the state's statutes requiring countersignature by Virginia licensed resident agents, even during the time their employees were permitted to provide the necessary countersignature. Furthermore, it appears from the evidence, and is not disputed, that the appellant companies have engaged generally in making hotchpotch contracts

in violation of the above quoted regulation of the insurance department, have engaged in rebating premium rates, and have acted as the medium for the rebating to the assured by the nonresident broker of part of the producer's commission factor which is loaded into the premium rate. These flagrant and wilful violations of Virginia laws have resulted in the evils set forth and discussed on pages 73-80, *supra*. It is also pointed out there the effect the statute here challenged will have towards remedying these evils. See page 75, ***supra,*** as to the Virginia countersigning agent's assistance to the state in enforcing anti-rebate laws, etc., in such cases.

Although the burden was on the appellants, by allegations in their complaint and by proof, to rebut the presumption of the existence of this state of facts attending the making of contracts in New York, they have neither alleged nor proven anything to rebut same. On the contrary, the existence of the facts was actually testified to by appellants' own witnesses. The truth is, instead of denying the existence of these facts the appellants claimed in the District Court that they have the right to grant rebates and discriminatory rates when the contract is made outside the state. It follows, necessarily, even aside from the testimony, from the fact alone that plaintiffs *deny* Virginia's jurisdiction to control the rates when the contract is made outside the state, that the court is not only justified in "conceiving" but must infer that this practice of rate cutting and rebating now exists and long has existed in the making of such contracts. And this necessary inference is further supported by the decisions of the New York courts which establish not only the fact that the practice of rebating by agents to assureds of part of the premium on risks domiciled in other states *is practiced in New York*, but also establish that such prac-

tice *is not in violation of the laws of that state.* In the case of *American Smelting & Refining Co. v. Stettenheim,* 164 N. Y. 235, decided in 1917, it appears that an insurance agent had made contracts with the Refining Company and others, under the terms of which he was to receive salaries aggregating $20,000 per year, but agreed to apply thereon all commissions earned on insurance placed pursuant to his employment, and also agreed to pay to his employers all such commissions earned *in excess of his salary.* The agent negotiated risks for his employers, some of the risks having their situs in New York and some in other states. The commissions on the risks domiciled in New York did not amount to more than the agreed salary. The agent paid to his employer-assureds commissions to the extent of his salary, but declined to pay to them the excess which resulted from commissions earned on risks, the situs of which was in states other than New York, on the ground that to do so would be a violation of section 65 of the insurance law of New York. This section prohibits any insurance company or agent from rebating to the assured any part of the premium "on property or risk located within this state, or against liability, casualty, accident or hazard that may arise or occur therein." The court rendered judgment in favor of the assureds, holding that the New York statute forbidding rebates by agents had no application to contracts covering risks having their situs in other states. The section of the statute involved in this case still contains the same language which the court construed as rendering it not applicable to rebates of premiums on risks covering in other states. Thus, it is not unreasonable to assume that this practice continues. As has already been pointed out, the requirement that contracts, negotiated in New York and other states, shall

be countersigned by Virginia *commission* agents and not by *salaried employees* of the insurance companies will be not only helpful, but is necessary, in order to bring the practice of rebating on Virginia coverage contracts within the measurable control of the State.

It is hoped the foregoing will serve to clarify the true issues and questions before the court in this case. Appellees will now proceed to reply to such parts of the appellants' brief as seem to call for answer, and, in so doing, will list the same headings used in said appellants' brief.

APPELLANTS' POINT I.

Appellants' statement of this point is as follows:

> "The Virginia Statute Prohibiting the Corporate Appellants from Making, Outside of Virginia, Contracts of Insurance and Surety Covering Persons and Property in Virginia, Is Unconstitutional and Void."

As appellees have hereinbefore pointed out (pp. 25-6, *supra*), the Virginia law enforcing authorities do not construe the statute as prohibiting appellant companies from making Virginia coverage contracts outside the State, and no such prohibition will be enforced. Appellees have shown, however, in Part I hereof, that the decisions of this Court clearly sustain Virginia's jurisdiction to impose reasonable regulations with respect to such contracts of insurance made by appellants outside the State when such contracts are made in the exercise of appellants' Virginia license privileges. The appellants in their brief (p. 19) deny that Virginia possesses such regulatory jurisdiction. They do not claim, as they did in their brief in the District Court, that these transac-

tions are of "no concern to her," but only that her jurisdiction does not extend to such contracts where same are "made in and according to the laws" of the state where made (p. 20).

It is obvious that Virginia is tremendously interested not only in the protection from unfair competition of her domestic insurance companies, her small or independent business industries and mercantile establishments, as well as her resident agents, but also in seeing that there is no discrimination made in rates or rebates of insurance premiums to the detriment of her own citizens. It is of vital concern to Virginia to protect her own citizens from the obviously unfair competition and increased insurance costs which result from giving preferential rates and rebates to national corporations operating industries and mercantile establishments and other types of business activities in Virginia in competition with Virginia citizens. It is also of great interest to Virginia that her insurance agents shall not be unfairly discriminated against in contracts involving insurance protection for these nationally owned competitiors covering their activities and operations in Virginia, which activities are carried on pursuant to a license privilege granted to such nationally owned competitors by this State.

At the outset, however, it should be made clear that Virginia is not claiming the right to prohibit the licensee insurance company from making Virginia coverage contracts outside the State in violation of Virginia premium rates and laws, in the sense that an injunction order could be secured to restrain such making. The licensee company doubtless may make such contracts just as an unlicensed insurance company may make them, and Virginia may have no jurisdiction to enjoin it. But the question here involved is as to the *legal consequences in*

Virginia of the doing of such acts by its licensee. Such acts persistently done *in the State* are unquestionably such a violation of the license privilege or franchise granted to the insurance company as to justify the State in revoking its license. But the appellant companies contend that they may make such contracts *outside the State,* and this strips Virginia of all power and jurisdiction to revoke their licenses. They claim that not only is the State without jurisdiction to revoke the offender's license, *but is compelled to permit the offender to perform in Virginia the contract made outside in violation of her laws.* Virginia's power to revoke the license is the precise question involved, because the prayer of the complaint is, in effect, that the appellees be restrained from revoking the appellant companies' licenses because of making such contracts outside the State while performing them inside by rendering inspection, engineering and claim service in connection therewith.

In support of their argument that the State is without jurisdiction to regulate Virginia coverage contracts made outside her borders, the appellants cite and rely upon a number of cases, some of them relating to a state's jurisdiction to tax or regulate such contracts, and others in the field of conflict of laws involving the question of whether the contracts shall be interpreted according to the *lex fori* or *lex loci contractus.* An examination of the cases cited, however, discloses that none of them was made *in the exercise of a license privilege to conduct an insurance business* in the state other than that in which the contract was made, where such other state was undertaking to tax or regulate, or its courts were engaged in construing the contract. These two types of cases will be discussed separately.

Cases cited by Appellants Relating to a State's Jurisdiction to Tax or Regulate

St. Louis Cotton Compress Company v. *Arkansas*, 260 U. S. 346, involved the validity of a tax imposed by Arkansas against the Compress Company, a manufacturing corporation, of 5% of the premiums paid by it to a *foreign insurance company NOT licensed* to do business in Arkansas. The contract was made outside the state but covered property located in the state. The Compress Company was a foreign corporation which was licensed in Arkansas. The court held the tax an attempt to regulate the activities of the *Compress Company* beyond the territory of the state, and that the state was without jurisdiction so to do. The making of such a contract was not an exercise of the Compress Company's license privilege to do a *manufacturing* business in Arkansas, while the insurance company with which it was made *had no license privilege to exercise.* This distinction is clearly developed in the *Tobacos case* (*Compania* v. *Collector*, 275 U. S. 87, heretofore discussed pp. 52-5, *supra*), which involved the validity of two separate taxes imposed on the *assured*, a licensed foreign *manufacturing* company. Both contracts were made outside the state but insured property in the state. (The word "state" is used because the court held the Philippine Islands occupied the status of a state in the case.) One of the contracts was made with a London insurance company, *which was licensed to do business in the state.* Losses under this contract were payable in London. The other contract was made with a Paris insurance company, *which was NOT licensed to do an insurance business in the state* with losses payable in Paris. The court treated the tax on the London company contract as though imposed directly on the insur-

ance company instead of the insured. The tax on the *licensed* London insurance company's contract was *sustained* on the ground that the making and carrying out of the contract involved *"an exercise or use of the right of the London Company to do business in the Philippines under its license."* The tax on the *unlicensed* Paris insurance company's contract was held invalid as an attempt by the state to tax or regulate the *Tabacos Company's activities outside the state.* The necessary conclusion is that making an *insurance contract* outside the state by a *manufacturing company licensee is NOT an exercise of its license privilege,* and cannot be taxed or regulated, but the making outside of the state of an *insurance* contract by an *insurance company licensee,* covering property in the state, *is an exercise* of the privilege of doing an *insurance* business in the state, and may be taxed or regulated by the state. This case clearly and unmistakably upholds the jurisdiction of the state, both to tax and to regulate the acts outside the state of a foreign corporaion where such acts are done *in the exercise of the corporation's licensed privileges.*

The *Allgeyer case,* 165 U. S. 578, cited by appellants, involved Louisiana's jurisdiction to impose on an individual *assured* a fine for making outside the state an insurance contract with an insurance company *not licensed* to do business in the state. The facts are practically the same as those in the *Cotton Compress case* and in the Paris insurance company contract in the *Tabacos case.* The effect of the decision is that the assured did not exercise a Louisiana license privilege in making the contract, and hence the state could not tax same.

Fidelity and Deposit Company v. *Tafoya,* 270 U. S. 426, cited by the appellants was a suit brought to restrain

the New Mexico Commission from suspending the right of an insurance company to do business in that state on account of the violation of a statutory provision which made it "unlawful for any insurance company authorized to do business in New Mexico to pay, either directly or indirectly, any fee, brokerage or other emolument of any nature to any person, firm or corporation not a resident of the state of New Mexico, for the obtaining, placing, or writing of any policy or policies of insurance covering risks in New Mexico."

New Mexico undertook to defend the validity of the statute on the ground that its purpose was to prevent payment of nominal commissions to resident agents in New Mexico of small sums for the use of their names; and that it was intended to secure responsible men to represent the company "on the spot." The court said in reply to this contention: "But whether such an interpretation would save the act or not it is impossible to limit it in that way. It forbids the payment of any emolument of any nature to any person for the obtaining, placing or writing of any policy covering risks in New Mexico. The words go beyond *any legitimate interest* of the state, and although the decree is based only on payments to agents *it* [the decree] *does not declare that the payments thus made prevented the payment of appropriate commissions to the agents in the state* nor does the statute limit its prohibition in that way." (Italics supplied.)

The necessary inference from the foregoing language is that, if the provisions of the statute has been restricted to accomplishing the purposes which they were intended to accomplish, such purposes would be of "legitimate interest" to the state. And the opinion of the court calls attention to the fact that the section had been repealed

by a new act "which substitutes the *more moderate requirement* that the policy must be delivered, the premium collected, and the full commission retained by an agent in New Mexico, with authority to that agent to employ a licensed nonresident broker to collect the premium, etc., and to pay him within limits." (Italics supplied.)

It will be observed that the new statute above referred to, which was passed in 1925 and has not since been challenged by the insurance companies, was quite similar to the statute here attacked in the case at bar, although the New Mexico statute went considerably further than the Virginia statute, in that it required the policy to be *delivered* and the premium *collected* by an agent *in New Mexico*. The reaction of this court to the new 1925 statute appears to have been quite favorable.

This brings us, then, to the second group of cases which will now be considered.

Cases Cited by Appellants Relating to the Interpretation of Contracts Where There is a "Conflict of Laws"

The appellees do not believe that the principles applicable to the interpretation of contracts where there is a conflict in the laws, and perhaps in the interests and public policies of two or more states, each of which is connected in some way with the making of the contract, the performance thereof or with its enforcement, have a controlling relation to the jurisdiction of a state to revoke a license privilege of an insurance corporation for its conduct in persistently making such contracts in violation of the license privilege granted. It may be said, generally speaking, and subject to some exceptions, that one state may not impose on the courts of another state any legal obligation to apply its laws in the interpretation of contracts, and while the full faith and credit clause is applicable in some cases where the contract is enforced in

a state different from that in which it is made, usually the problem is solved by the application of rules of comity and relative interest rather than of jurisdiction.

The case of *Aetna Life Insurance Company* v. *Dunken*, 266 U. S. 389, cited by appellants, was an action instituted in Texas upon a life insurance policy made in Tennessee at a time when the assured was a resident of that state. The insurance company was qualified to do business in Tennessee. The assured afterwards moved to Texas where he died and the beneficiary recovered judgment in the courts of that state for certain attorney's fees and damages provided for by the Texas statute but not by the statutes of Tennessee. The court held that it was beyond the power of the State of Texas to impose on the insurance company a greater obligation than that undertaken by it when it made the contract in the State of Tennessee, where the insured then resided. This contract was clearly made by the insurance company in the exercise of its license privilege granted to it by the State of Tennessee and was a *Tennessee coverage contract*. There can be little doubt as to the correctness of the conclusions reached that its interpretation and the obligations imposed thereby were controlled by the laws of Tennessee, since the contract was neither made in Texas nor in the exercise of a privilege granted by that state.

The appellants also cited the case of *New York Life Insurance Company* v. *Head*, 234 U. S. 149, but the appellees do not think a discussion of this case will throw any light upon the questions now before this Court. The conclusion there reached was obviously correct.

Appellants also rely on *Hartford Accident & Indemnity Company* v. *Delta & Pine Land Company*, 292 U. S. 143. The action was brought in *Mississippi* on a surety

bond which was negotiated in Memphis, *Tennessee,* which was the principal office *of the assured* in that state. The action was barred under the contract, as construed under Tennessee laws, but was not barred under the statutes of Mississippi, where the action was brought. The contract was a blanket bond covering any employee of the assured "in any position *anywhere.*" The court apparently reached the conclusion that the contract was not a *Mississippi coverage contract,* and therefore Mississippi had such a slight interest in the transaction that she would not be justified in construing the contract under Mississippi laws, though the court implied that if the reverse had been true, her laws would apply. The reasoning of the court is quite illuminating, so appellees will quote the pertinent portions of the opinion, which are as follows:

> "* * * It is true the bond contemplated that the employee whose faithfulness was guaranteed might be *in any state.* He was in fact in Mississippi at the date of loss, as were both obligor and obligee. The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations *by reason of the state's alleged interest in the transaction?* We think not. Conceding that ordinarily a state may prohibit performance within its borders even of a contract validly made elsewhere, if the performance would violate its laws (*Home Ins. Co.* v. *Dick, supra,* [281 U. S. 408]), it may not, on grounds of policy, ignore a right which has lawfully vested elsewhere, *if, as here, the interest of the forum has but slight connection with the substance of the contract obligations.* Here performance at most involved only the casual payment of money in Mississippi. In such a case the question ought to be

regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum, *regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract*, conflicts with the guaranties of the Fourteenth Amendment. [Citing cases]. Cases may occur in which enforcement of a contract as made outside a state may be so repugnant to its vital interests as to justify enforcement in a different manner. Compare *Bond* v. *Hume*, 243 U. S. 15, 22. But clearly this is not such a case." (292 U. S. 143, 149. Italics supplied.)

It is very clear from what has been quoted from the foregoing opinion that the relative interests of the particular states most affected by a contract of this kind will and should be controlling as to the laws governing the interpretation thereof. If there is any question of *jurisdiction* involved, the determination of the question is not controlled by technical boundary lines, or by *where* the *contract was made*, but by considerations of the respective degrees of interest each state has in the transaction. With reference to insurance contracts covering risks in Virginia, New York would have no interest in the matter of compliance with Virginia's premium rates fixed by law, or in preventing rebates (as shown by her statute which is confined to domestic coverages) or in matters of unfair competition affecting persons in Virginia which may result from the contracts, while all these matters are of vital concern to the State of Virginia. It seems highly probable, therefore, in the light of what was said in the above case, that the courts would construe such a con-

tract in conformity with Virginia statutes even though made in New York. But, be this as it may, it is clear from the opinion above quoted that Virginia would not be compelled to recognize or permit the servicing or performance in Virginia of any such contract made in violation of her laws which would be prejudicial to the interests of Virginia and her citizens. The challenged statute has been construed by the Virginia authorities as requiring the appellant companies to associate with each such contract a resident commission agent for the purpose of servicing same, both before and after the making thereof. Appellants claim this requirement "penalizes" the companies, but this contention is obviously without merit. One purpose of the statute is to regulate the manner in which these contracts shall be serviced. This servicing consists of the agent familiarizing himself with the risk and examining the contract as to *correctness of coverage and rates, before countersigning.* Thereafter, during the life of the policy, the statute contemplates that the contract shall be *serviced jointly* by the company's engineers, inspectors and claim agents on the one hand, *along with the company's resident commission agent* on the other. How can it possibly be contended that the company is servicing the contract in compliance with these regulations when it omits entirely *that part* of the servicing which the statute contemplates shall be rendered by the company's *resident commission agent.* As construed by the Virginia Corporation Commission and Bureau of Insurance this statute is a *servicing regulation,* intended to require servicing by the resident commission agent along with such other servicing as the insurance company may provide. This agent's servicing, however, is an essential

The statute does not require the engineer, inspector or claim agent to service the contract. This latter is an implied obligation of the contract, but the *only* Virginia agent or employee which the *statute requires* to be engaged in servicing the contract is the resident Virginia commission agent. How, then, can the insurance company possibly service the contract in conformity with the statute without providing the services of the resident agent as the statute requires?

An interesting case (cited by appellants) in that part of the field of Conflict of Laws which relates to the jurisdiction of a state, through its courts, to change the legal rights and obligations of the parties under contracts made in other states, where nothing was done or contemplated to be done in the state of the forum and such state had no legitimate interest in the transaction, is *Home Ins. Co.* v. *Dick* (1929), 281 U. S. 397. After pointing out that the insurer was not licensed in Texas, where the suit was brought, that the contract was not made there and that the property insured was not located there, the court held that the judgment of the Texas court extending the agreed time within which suit must be instituted, and subjecting property to the payment of the claim, deprived the defendant of due process of law, citing, among others, the *Tabacos case* which has just been discussed. In a footnote Mr. Justice Brandeis said:

> "The division of this court in the *Tabacos* and *Dodge cases* was not on the principle here stated, but on the *question of fact* whether there were in those cases things done within the state of which the state could properly lay hold as the basis of the regulations there imposed. Compare *Bothwell* v. *Buckbee, M. Co.*, 275 U. S. 274, * * *; *Palmetto F. Ins. Co.* v. *Conn*, 272 U. S. 295, * * *. *In the ab-*

> *sence of any such things*, as in this case, the court was agreed that a state is without power to impose either *public* or *private* obligations on contracts made outside of the state *and not to be performed there*. Compare *Mutual L. Ins. Co.* v. *Liebing*, 259 U. S. 209, * * *." (281 U. S. 397, 408-409, fn.)

The clear inference from the foregoing, and the decision that in the *Tabacos case* the state of coverage had jurisdiction to tax the contract with the licensed London Company, which contemplated acts of performance in the state of coverage if losses occurred, is that in such cases the state of coverage may impose both public and private obligations on such contracts made outside its borders. The opinion in this case also said: "Doubtless the state may *prohibit the enjoyment* by persons within its borders of rights acquired elsewhere which violate its laws or *public policy*." (Italics supplied.)

Appellants also cite *Boseman* v. *Connecticut General Life Insurance Company*, 301 U. S. 196, which involved the question whether the laws of Texas or Pennsylvania controlled the interpretation of a group life insurance contract made in the latter state by an employer which covered an employee in Texas. The insurance company was not licensed in Texas when the contract was made and, therefore, was not exercising a Texas license privilege in making the contract. This Court held the contract should be construed according to Pennsylvania laws. There can be no doubt about the correctness of this decision.

Appellants argue (Brief, 31) that the case of *Great Atlantic & Pacific Tea Co.* v. *Grosjean*, *supra*, does not sustain Louisiana's jurisdiction to regulate the operation of the company's stores in other states, and that such a regulation would be parallel to Virginia's regulation of

contracts covering Virginia risks when made outside the State. But this Court has held in the *Tabacos* and *St. Louis Compress cases, supra*, that a foreign corporation, conducting an ordinary business under a license of a state, does not exercise its license privilege when making contracts outside the state, but an insurance company does when the contract covers risks within the state permitting acts of servicing or performance therein.

There can be no doubt that rights acquired under foreign made insurance contracts involving rebates or rate reductions do violate both Virginia laws and her public policy, and she may prohibit the insurance company licensee from enjoying such rights in Virginia by revoking its license to do business therein.

APPELLANTS' POINT II.

"Section 4226(a) of the Code of Virginia Prohibiting Appellants from Making Any Contract of Insurance or Surety on Persons or Property in Virginia if Solicited or Negotiated out of Virginia by a Person not Licensed by Virginia, Denies to the Appellants Due Process of Law, and is Unconstitutional and Void."

Again appellants seek to strengthen their position by placing on the Virginia statute a construction different from that given it by appellees in enforcing the law. It has been pointed out repeatedly that the appellees' answer and the testimony of the enforcement officer Moore construe the statute as permitting the appellants to pay a New York broker any compensation they desire for negotiating contracts. The only prohibition in connection with payment of commissions is against the agent, who is not permitted to divide his commission with any one in or outside Virginia, except a Virginia licensed

agent or broker. To allow otherwise would legalize rebating and would demoralize the business.

The Virginia statute does not prohibit appellants from issuing through Virginia resident agents contracts negotiated by nonresidents not licensed in Virginia, provided the Virginia agent countersigns the contract and is paid the customary commissions. This he may do at the request of the insurance company, and there is nothing to prevent the company from paying the nonresident broker, whether licensed in Virginia or not, any compensation it desires.

Appellants again cite *Fidelity and Deposit Company* v. *Tafoya, supra,* but appellees do not consider it necessary to add anything to their discussion of this case under appellants' "Point I," *supra.*

APPELLANTS' POINT III.

Reasonableness of Equal Division of Commissions between Virginia Agent and Nonresident Broker

The appellants argue that many Virginia agents are not nearly so competent as nonresident agents and brokers, and therefore their services would be of no benefit, but the statute contemplates that the assured will have the *joint services* of the local agent *and* the nonresident broker, as has been the custom in fire insurance. Furthermore, the assured or broker will have no difficulty in having the local agent of his choice associated with the contract, as any insurance company can easily secure the services of any particular agent by appointing him if he does not represent the company already. The agents do not represent any company or companies exclusively. Then, again, the members of the General Assembly were presumably acquainted with the qualifications of Virginia agents and their opinions on this question should

prevail over the opinions of appellants' salaried employee and broker witnesses, on which appellants base their arguments.

Appellants also argue that the services of the Virginia agent are not worth as much as those of the nonresident agent or broker who negotiates the contract and makes perhaps thousands of dollars as a result of a few days effort. Appellants probably have in mind the value of the rebate given by the broker, or his skill in securing discriminatory reduced rates by auctioning off the risk. However, that is one of the chief evils which the officers charged with enforcing Virginia's insurance laws hope the statute will remedy. Of course, this Court cannot undertake to measure the relative value of the services of the resident agent as compared with the nonresident broker, but the standard of fifty per cent of the commissions to each, which has been established by custom in the fire insurance business and has proven fair and satisfactory, is the only available yardstick. At any rate its adoption by the legislature cannot be said to be arbitrary and capricious in the absence of clear proof that the same practice would not be fair to the appellants. There has been no proof of any greater service to be rendered by a local agent in fire insurance cases. On the contrary, the evidence shows *more* need for it in the casualty lines (R. 361). In fact a fair reading of the testimony of all the witnesses leads to the irresistible conclusion that the local Virginia agent will render more and better service, service of greater value to all parties concerned, than the nonresident broker can possibly render without actually coming to Virginia.

Furthermore, the impartial Virginia local commission agent who is required to sign the contract can, under appropriate regulations of the insurance department, be

required to render the State department much valuable service in policing the writing of contracts and policies at the prescribed rates and in compliance with law, and in providing information upon which to base assessments of taxation against the companies. The agents can easily secure and, if required, report to the department the total amount of Virginia coverage premiums collected by all the insurance companies (R. 366-7, 430-1). Virginia taxes are assessed on premiums. There is a general belief among responsible Virginia agents that the insurance companies fail to report all the premiums for taxation (R. 427).

Appellants apparently argue that even if the State may properly require countersignature by a Virginia resident agent and provide reasonable compensation for what service he may render, yet it is arbitrary for it *to fix the basis* of his participation and this should be left open to agreement between the agent and the broker, or the agent and the insurance company. But this would entirely frustrate the purposes of the statute as the appellees conceive them. So-called "countersignatures" would either be auctioned off or a "dummy" agent appointed to countersign for a nominal sum. There would be no supervision of rates or contents of policies and contracts, and the policing function of the competent resident commission agent would be destroyed. No service would be rendered either to the insurer, the assured, or to the State in accident prevention work or other matters affecting the public interest, and the act of countersigning these contracts would remain a perfunctory matter as it was before the passage of this law. It is essential, in order to accomplish these purposes, that a fair standard of division of commissions be prescribed by law, and, as before

stated, the only yardstick available to determine this is the practice which has become established voluntarily in the fire insurance business. The appellants have been unable to distinguish favorably to their contentions between the extent or value of the servicing practices of the local agents in these various types of risks. After all, the agent has an incentive to make the amount of service rendered by him satisfactory to the assured and the broker, for if he does not, they will secure another agent when the contract is renewed, as well as in other contracts produced in the future. The appellees do not feel that there is cause to fear that the assureds and brokers will fail to secure services commensurate with the compensation received by the local agent.

Furthermore, the fact that the legislatures of many other states have adopted the same basis of equal division of commissions for the fire, casualty and surety businesses, is practically conclusive that this standard is a fair and reasonable one. In fact some states seem to have gone so far as to require all the producer's commission to be retained by the local agent. (See division VIII, *supra.*)

The appellants rely upon *West Coast Hotel Company* v. *Parrish,* 300 U. S. 379, (minimum wage case) in support of their argument that the standard of equal division of commissions is violative of due process. But the statute in that case fixed a minimum wage *definitely and affirmatively* predicated in part on something essentially *different* from the value of the services. In the case at bar certainly *no different basis than just compensation is prescribed* by the statute. If so, the appellants have not pointed it out. The *presumption* is that the legislature considered the practice of compensating the local agent on an equal basis with the broker which obtained in the fire insurance business also a reasonable standard to

adopt for surety and casualty insurance, and that there was no great difference in the service practices of local commission agents in the casualty and surety fields. The appellants have failed to prove that there is any difference favorable to their contentions. Their only reliance is on statements of their own salaried employees, and of brokers who do not want the Virginia agent to receive any part of the commissions, to the effect that in their opinions the Virginia agent will not fairly earn his share of the commission. The Virginia agents testify to the contrary. And under this state of evidence the appellants ask this Court to overthrow the findings of the legislature as to reasonableness and accept the speculative opinions of their prejudiced witnesses. The presumption is that the compensation of the Virginia agent is based upon the value of services to be rendered.

As said in the *West Coast case* (300 U. S. 379, 396):

> " 'The minimum wage to be paid under the Washington statute is fixed after full consideration by representatives of employers, employees and the public. *It may be assumed* that the minimum wage is fixed in consideration of the services that are performed in the particular occupations under normal conditions' (p. 396)." (Italics supplied.)

Although this Court *assumed* that the compensation was fixed "in consideration of the services" to be performed, yet appellants now ask the Court to assume exactly the opposite, or at least to find the opposite because the hostile brokers and salaried employees of appellants testify they are of a different opinion from the legislature as to the value of the local agents' services, and this also in the face of the contradictory testimony of the four agents, the resolution of the Agents Associa-

tion and the construction placed on the act by the Insurance Bureau and the Corporation Commission.

The effect of the decision in the *West Coast case* is to establish the proposition that, where in the exercise of the police power a state prescribes a standard of compensation for an agent or employee, the *quantum meruit* test is not the only one to be applied to determine the validity of the legislative action, and that there may be, as there are in the case at bar, other legitimate legislative purposes to be accomplished. In such cases the Court will not undertake to evaluate the services but will look to all the ends which may be achieved and consider whether, viewed in its entirety, the objects are so unrelated to the legislation as to necessitate the Court's holding same arbitrary and capricious.

Appellants express the fear that the brokers would place their business with mutual companies. But the statistical information filed by Mr. Moore, of the Bureau of Insurance, at appellants' request, shows that the *stock casualty* companies' premium business in Virginia for the year 1937 was $9,511,138, and the *mutual casualty* companies' premium business was $3,362,140 (R. 929, 932); while the *stock fire* insurance companies' premium business was $10,617,644, and that of the *mutual fire* insurance companies was only $1,398,365 (R. 929, 934). Thus the *stock casualty* companies transacted seventy-three per cent of the total casualty premium volume of Virginia, while the *stock fire* companies' premium volume was eighty-eight per cent of the combined total of *fire* insurance business. It is clear, therefore, that the practice of associating a resident Virginia commission agent on a basis of equal division of the premium has not only not been injurious to the *stock fire* companies as compared to the *stock casualty* companies, but has resulted in their transacting a much larger percentage of the total *fire*

insurance business than the *stock casualty* companies have transacted of the total *casualty* business.

The statistics, therefore, bear out the soundness of the contentions advanced by the high officers of the stock insurance companies quoted in appellees' original brief that the *best way* for the stock companies to compete with the mutual companies *is to provide the assureds with the very valuable services of the local commission agent.*

APPELLANTS' POINT IV.

The contention that the appellant branch managers are unduly discriminated against has been discussed under appellees' points VI and VII, *supra*, pages 108-113, and it is not desired to add anything to what is said there.

CONCLUSION

On the whole case it is clear that the appellant insurance company licensees cannot defeat or impair Virginia's jurisdiction to revoke their license privilege for violation of her laws by resorting to the device of going outside the State to violate said license privileges, so long as the acts done outside the State are done in the exercise of said privileges, and that the means employed by the statutes here challenged to prevent such violations are reasonable and appropriately adapted to accomplish a legitimate end; therefore the decree dismissing the complaint should be affirmed.

Respectfully submitted,

ABRAM P. STAPLES,
Attorney General of Virginia and, as such, Attorney for the Appellees.

March, 1940.

APPENDIX

The following numbered Virginia Code sections are set out in full in the appendix to appellants' brief at the pages indicated below:

Section 4180, pp. 63-5;
Section 4221-a, pp. 58-60;
Section 4222, pp. 49-52;
Section 4223, pp. 65-6;
Section 4226-a, pp. 52-4;
Section 4235, pp. 55-58;
Section 4235-b, pp. 60-2;
Section 4235-c, p. 62.

pp. 2, 5, 7,

SUPREME COURT OF THE UNITED STATES.

No. 592.—October Term, 1939.

William H. Osborn, Channing F. MacNeil, Lewis C. Adair, et al., Appellants,
vs.
Thos. W. Ozlin, William Meade Fletcher, and Lester Hooker, etc., et al.

Appeal from the District Court for the Eastern District of Virginia.

[April 22, 1940.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Appellants have challenged the validity of a Virginia statute regulating the insurance of Virginia risks and have brought this suit to enjoin state officers from enforcing it. Its relevant provisions, copied in the margin,[1] forbid contracts of insurance or surety by companies authorized to do business within that Commonwealth "except

[1] The relevant portions of the Virginia statute are as follows: Section 4222. . . . (a) Insurance companies, legally authorized to do business in this State, except life, title and ocean marine insurance companies, shall not make contracts of insurance or surety on persons or property herein, except through regularly constituted and registered resident agents or agencies of such companies; no contract of insurance or surety covering persons or property in this State, except contracts of life, title and ocean marine insurance and except temporary binders covering other forms of insurance shall be written, issued or delivered by any such authorized insurance company, or any of its representatives, unless such contract is duly countersigned in writing by a resident agent or agency of such company; provided, however, that the countersignature of an insurance agency shall not be considered valid unless such countersignature be attested to in writing by a regularly constituted and registered resident agent of such company.

No State agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, or any renewal thereof, covering persons or property in this State, except contracts of life, title and ocean marine insurance; provided that this section shall not apply to railroad companies and other common carriers engaged in interstate commerce.

. . . . . .

Section 4226-a. . . . . No resident agent or agency may write, countersign, issue or deliver any contract of insurance or surety upon persons or property in this State unless there shall be collected at the time the contract is written, issued or delivered, or within a reasonable time therafter, the full premium on such contract, and the resident agent or agency shall be entitled to and shall receive the usual and customary commissions allowed on such contracts, provided that such resident agent or agency may write such contracts at the request only of such other resident agents or agencies, when such agent or agen-

through regularly constituted and registered agents or agencies of such companies." § 4222, c. 218, Acts of 1938. Such resident agents "shall be entitled to and shall receive the usual and customary commissions allowed on such contracts," and may not share more than half of this commission with a non-resident broker. § 4226-a. Disobedience of these provisions (from which life, title and marine companies are exempted) may entail a fine or revocation of the corporate license in Virginia, or both. A district court of three judges, convened under § 266 of the Judicial Code as amended, 28 U. S. C. §.380, dismissed appellants' bill on the basis of elaborate findings of fact and conclusions of law, set forth in an opinion by Circuit Judge Soper. 29 F. Supp. 71. From this decree the case comes here on appeal under § 238 of the Judicial Code, as amended, 28 U. S. C. § 345.

The bill was brought by foreign corporations authorized to do casualty and surety business in Virginia, and by some of their salaried employees. It is their claim that the statute deprives them of rights protected by the Fourteenth Amendment of the Constitution. The exact nature of these claims will appear more clearly in the setting of the illuminating findings below which may here be abbreviated.

The "production" of insurance—"production" being insurance jargon for obtaining business—is, in the main, carried on by two groups, agents and brokers. Though both are paid by commission, the different ways in which the two groups perform their functions have important practical consequences in the conduct of the insurance business, and hence in its regulation. The agent is tied to his company. But his ability to "produce" business depends upon the confidence of the community in him. He must therefore cultivate the good will and sense of dependence of his clients. He may finance the payment of premiums; he frequently assists in the [redacted] of claims; he acts as mediator between insurer and assured in the diverse situations which arise. The broker, on the other hand, is an independent middleman, not tied to a particular company. He meets more specially the needs of

cies are properly licensed to transact the class of business involved in such exchange, and licensed non-resident insurance brokers who may be authorized by law to broker such contracts, and on exchange of business between resident agents or agencies in Virginia and licensed non-resident insurance brokers in other states the resident agent or agency in Virginia may allow or pay to such licensed non-resident insurance brokers, a commission not exceeding fifty per centum of the resident agent's or agency's commission allowed on such business.

large customers, using their concentrated bargaining power to obtain the most favorable terms from competing companies. His activities, being largely confined to the big commercial centers, take place mostly outside Virginia.

A policy, whether "produced" by broker or agent, must be "serviced"—an insurance term for assistance rendered a customer in minimizing his risks. To this end the companies exert themselves directly, but the "producer" may render additional service. Only to a limited extent can risks be minimized at long range; local activity is essential. When the contract is "produced" by a non-resident broker the "servicing" function is normally performed by the company exclusively. When the "producer" is a resident agent, the case is ordinarily otherwise. For this, as well as for other reasons, it is obvious that non-resident brokers prefer to negotiate their contracts covering Virginia risks with companies authorized to do business in that Commonwealth.

These basic elements in the insurance business attain special significance in the case of enterprises operating not only in Virginia but in other states as well. For them the brokerage system offers the attractions of large-scale production. Through what is known as a master or "hotchpotch" policy, the assured may obtain a cheaper rate by pooling all his risks, whether in or out of Virginia. This wholesale insurance may furnish not only a reduced rate but a reduced commission to the customer. These are advantages which naturally draw the Virginia business of interstate enterprises away from local agents in Virginia to the great insurance centers.

In affecting the cost of these master policies, say the appellants, Virginia is intruding upon business transactions beyond its borders. Not only is a licensed company forbidden to write insurance except through a resident agent, but the agent cannot retain less than one-half of the customary commission allowed on such a contract for what may, so far as the requirements of the law are concerned, be no more than the perfunctory service of countersigning the policy.

But the question is not whether what Virgina has done will restrict appellants' freedom of action outside Virginia by subjecting the exercise of such freedom to financial burdens. The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that

domain which the Constitution forbids. *Alaska Packers Assn.* v. *Comm'n.*, 294 U. S. 532; *Atl. & Pac. Tea Co.* v. *Grosjean*, 301 U. S. 412. Compare *Equitable Life Society* v. *Pennsylvania*, 238 U. S. 143. It is equally immaterial that such state action may run counter to the economic wisdom either of Adam Smith or of J. Maynard Keynes, or may be ultimately mischievous even from the point of view of avowed state policy. Our inquiry must be much narrower. It is whether Virginia has taken hold of a matter within her power, or has reached beyond her borders to regulate a subject which was none of her concern because the Constitution has placed control elsewhere. Compare *Wallace* v. *Hines*, 253 U. S. 66, 69.

Virginia has not sought to prohibit the making of contracts beyond her borders. She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia, and Virginia's regulation of it.

A network of legislation controls the surety and casualty business in Virginia. Insolvent companies may not engage in it. Virginia Code, § 4180. Neither companies nor agents may give rebates. § 4222-c. Rates for workmen's compensation, automobile liability and surety contracts are determined by its Corporation Commission. §§ 1887(75), 4326-a-1, 4350-3. The difficulty of enforcing these regulations, so the District Court found, may be increased if policies covering Virginia risks are "produced" without participation by responsible local agents. Rebates evading local restriction may be granted under cover of business done outside the state. Contrariwise, if resident Virginia agents are made necessary conduits for insurance on Virginia risks now included in master policies, the state may have better means of acquiring accurate information for the effectuation of measures which it deems protective of its interests.[2]

It is claimed that the requirement that not less than one-half of the customary commission be retained by the resident agent is a bald exaction for what may be no more than the perfunctory serv-

[2] Where out-of-state "production" actually leads to rebating in defiance of § 4222-c, there would seem little doubt of a substantial basis for Virginia's contention that the requirement of participation by a resident agent will make

ice of countersigning policies. The short answer to this is that the state may rely on this exaction as a mode of assuring the active use of resident agents for procuring and "servicing" policies covering Virginia risks. These functions, when adequately performed, benefit not only the company, the producer, and the assured. By minimizing the risks of casualty and loss, they redound in a pervasive way to the benefit of the community.[3] At least Virginia may so have believed. And she may also have concluded that an agency system, such as this legislation was designed to promote, is better calculated to further these desirable ends than other modes of "production."[4] When these beliefs are emphasized by legislation embodying similar notions of policy in a dozen states,[5] it would savor of intolerance for us to suggest that a legislature could not constitutionally entertain the views which the legislation adopts. Compare *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530, 537.

---

the illegal practices more susceptible of detection and control. Cf. LaTourette v. McMaster, 248 U. S. 465. Virginia has also contended that the master policy makes it possible for the companies to reduce their rates below the requirements of state law, and to attribute the reductions to risks in other states with requirements less stringent than those of Virginia. Appellants strenuously contend that no law of Virginia prohibits the reduction of rates for out-of-state risks to compensate for the higher rates which might be required by Virginia and, therefore, there is no illegal practice in this connection which the existence of a resident agent could aid in uncovering. This argument, if met on the merits, would lead us into the particularities of Virginia's rate laws. It is enough to say that even if these practices are not illegal, Virginia may have a legitimate interest in discovering the extent of their prevalence in order to devise, if she so chooses, effective laws to prevent them.

[3] See Hardy, Risk and Risk-Bearing, pp. 9-28, 66-67; Kulp, Casualty Insurance, pp. 188-91, 467-68; Michelbacher, Casualty Insurance Principles, pp. 448-78, 583-84; Crobaugh and Redding, Casualty Insurance, pp. 17-20; Huebner, Foreword to Modern Insurance Tendencies, 157 Annals of the American Academy of Political and Social Science, pp. 3-4; Burns, Service of Casualty Insurance, 15th Annual Meeting, Chamber of Commerce of the United States, p. 4.

[4] "The broker is not required to render any technical service beyond the placing of business." Michelbacher, Casualty Insurance Principles, p. 403. Compare *Id.*, pp. 401-402; Huebner, Property Insurance, pp. 81-96; Proceedings, 73rd Annual Meeting, National Board of Fire Underwriters, p. 123; Clark, Ellis and Fletcher, The Service of the Broker to the Assured in Liability Insurance, Howe Readings in Insurance, No. 18. But even if the broker does "service" the contract, his activities will take place in Virginia, and will affect the welfare of those inside Virginia who may be subject to the incidence of those risks which the "servicing" function tends to reduce. If this be true, it is Virginia's concern and not ours to prefer the agency to the brokerage method of "production."

[5] Alabama Code, § 8379 [as amended by § 980, Laws of 1939]; Kansas, General Statutes (Supp.), c. 40, § 246; Louisiana, Acts of 1918, No. 153; Maryland, Annotated Code, Art. 48A, § 65; Mississippi, Code, § 5205; Montana, Laws of 1937, c. 95; Oklahoma, Statutes Ann., Title 36, §§ 126, 142, 249;

The present case, therefore, is wholly unlike those instances in which a "so-called right is used as part of a scheme to accomplish a forbidden result." *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 434. For it is clear that Virginia has a definable interest in the contracts she seeks to regulate and that what she has done is very different from the imposition of conditions upon appellants' privilege of engaging in local business which would bring within the orbit of state power matters unrelated to any local interests. It is not our province to measure the social advantage to Virginia of regulating the conduct of insurance companies within her borders insofar as it affects Virginia risks. Government has always had a special relation to insurance. The ways of safeguarding against the untoward manifestations of nature and other vicissitudes of life have long been withdrawn from the benefits and caprices of free competition.[6] The state may fix insurance rates, *German Alliance Ins. Co.* v. *Kansas*, 233 U. S. 389; it may regulate the compensation of agents, *O'Gorman & Young* v. *Hartf'd Ins. Co.*, 282 U. S. 251; it may curtail drastically the area of free contract, *Nat. Ins. Co.* v. *Wanberg*, 260 U. S. 71. States have controlled the expenses of insurance companies, New York Insurance Law, Consolidated Laws of New York, c. 28, §244, and Wisconsin Statutes, § 201.21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N. Y.) pp. 403-18 (1906). They have also promoted insurance through savings banks; see Berman, The Massachusetts System of Savings Bank Life Insurance, Bulletin No. 615, U. S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, *Green* v. *Frazier*, 253 U. S. 233, or might take "the whole business of banking under its control," *Noble State Bank* v. *Haskell*, 219 U. S. 104, 113. If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in

South Carolina, Code, § 7972; South Dakota, Code, § 31.2218; Washington, Rev. Statutes, § 7080; Wisconsin, Statutes, § 201.44; Wyoming, Rev. Statutes, c. 57, § 203.

[6] See Gephart, Principles of Insurance, pp. 233-55; Dawson, Insurance Legislation (1895); Abstract of the Laws of Virginia in Relation to Insurance Companies, etc., issued by the Auditor of Public Accounts (1878); Patterson, The Insurance Commissioner in the United States.

devising and safeguarding protection against its local hazards. *La Tourette* v. *McMaster*, 248 U. S. 465. All these are questions of policy not for us to judge. For it can never be emphasized too much that one's own opinion as to the wisdom of a law must be wholly excluded when one is doing one's judicial duty. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control.

In reaching this conclusion we have been duly mindful of the cases urged upon us by appellants. In *Allgeyer* v. *Louisiana*, 165 U. S. 578, apart from the doubts that have been cast upon the opinion in that case, the state attempted to penalize the making of contracts by its residents outside its borders with companies which had never subjected themselves to local control. Thus the statute was thought to be directed not at the regulation of insurance within the state, but at the making of contracts without. This was followed in *St. Louis Compress Co.* v. *Arkansas*, 260 U. S. 346; but see the refined distinctions drawn in *Compania de Tabacos* v. *Collector*, 275 U. S. 87. In *Fidelity & Deposit Co.* v. *Tafoya*, *supra*, the Court found that New Mexico had exceeded its power by forbidding "the payment of any emoluments of any nature to any [non-resident] for the obtaining, placing or writing of any policy covering risks in New Mexico". The Court was of opinion that this statute went "beyond any legitimate interest of the State. . . . ," *ibid.* at 435, but carefully withheld its judgment as to the validity of a later New Mexico statute not unlike the Virginia law here under review.[7]

The decree must be

Affirmed.

---

[7] Hartford Ind. Co. v. Delta Co., 292 U. S. 143, resting on Home Ins. Co. v. Dick, 281 U. S. 397, held that the terms of a contract validly made in Tennessee could not be subsequently enlarged by Mississippi as to a condition of "substantial importance" when suit was later brought on the policy in Mississippi, simply because "the interest insured was in Mississippi when the obligation to indemnify . . . matured, and it was . . . . [the company's] duty to make payment there." 292 U. S. at 149. At the time the contract was entered into Mississippi had no interest in the risk covered. The Court felt that, even at the time of suit, "performance at most involved only the casual payment of money in Mississippi," *ibid.* at 150, and that was an interest so subordinate to that of Tennessee that the latter was entitled to have the right of way. No question was thus involved touching the right of a state to regulate companies doing business within its borders as to contracts of insurance covering local risks.

SUPREME COURT OF THE UNITED STATES.

No. 592.—October Term, 1939.

William H. Osborn, Channing F. MacNeil, Lewis C. Adair, et al., Appellants,
vs.
Thomas W. Ozlin, William Meade Fletcher and Lester Hooker, etc., et al.

Appeal from the District Court of the United States for the Eastern District of Virginia.

[April 22, 1940.]

Mr. Justice Roberts.

I am unable to agree with the decision in this case. I think it sanctions an exertion of power by Virginia over transactions beyond her jurisdiction.

Virginia may, of course, regulate the making of contracts of insurance within her borders. She may require such contracts to embody specified provisions. She may regulate the enforcement of these contracts in her courts. She may supervise and condition the activities of registered foreign insurance companies, agents or brokers within the Commonwealth. The statute in question has no such purpose.

The purpose and effect of the statute is to compel an insurance company which is a citizen of another state, and which negotiates a contract of insurance with an agent or broker within such other state, to pay a resident of Virginia for a service not rendered by him, but rendered by another in another state. By force of the statute a Virginia agent must countersign a contract negotiated outside of Virginia with an assured whose residence is outside of Virginia, which contract of insurance was negotiated by an agent or broker living outside of Virginia. The countersigning Virginia agent must be paid one-half the usual commission, even though the broker or agent who produced the business is licensed as a non-resident broker by Virginia, although the only service such Virginia agent is required to render and, in many cases all he does render, is the mere countersignature of the policy. With respect to this situation the court below said:

"We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state

desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact, the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business."

The plain effort of Virginia is to compel a nonresident to pay a resident of Virginia for services which the latter does not in fact render and is not required to render. The principles underlying former decisions of this court are at war with the existence of any such asserted power.[1]

The CHIEF Justice and Mr. Justice MCREYNOLDS join in this opinion.

[1] Allgeyer *v.* Louisiana, 165 U. S. 578; New York Life Ins. Co. *v.* Head, 234 U. S. 149; Aetna Life Ins. Co. *v.* Dunken, 266 U. S. 389; Fidelity & Deposit Co. *v.* Tafoya, 270 U. S. 426; Home Ins. Co. *v.* Dick, 281 U. S. 397; Hartford Accident & Indemnity Co. *v.* Delta & Pine Land Co., 292 U. S. 143; Boseman *v.* Connecticut General Life Ins. Co., 301 U. S. 196.